DOCUMENT RESUME

ED 088 470 IR 000 303

TITLE	Cable: Report to the President, 1974.
INSTITUTION	Office of Telecommunications Policy, Washington, D.C.
PUB DATE	74
NOTE	112p.
AVAILABLE FROM	Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402 (Stock Number 4000-00304, $1.50)
EDRS PRICE	MF-$0.75 HC-$5.40
DESCRIPTORS	*Cable Television; Communications; Government Role; Information Networks; *Mass Media; *National Programs; National Surveys; Planning; *Policy; *Policy Formation; Programing (Broadcast); Telecommunication
IDENTIFIERS	*Cabinet Committee on Cable Communications; Federal Regulation; Franchising

ABSTRACT

A comprehensive, new national policy for cable communications is recommended by the Cabinet Committee on Cable Communications. The goal of the policy is to achieve the orderly integration of cable with other existing communications media so that information may flow freely, protected from both private and governmental barriers. The first two chapters examine, respectively, the need for developing a new cable communications policy and cable as a medium open to all. Chapter III presents a series of 12 long-range policy recommendations which deal with: 1) the industrial structure, ownership and control of cable distribution facilities and programing; 2) the institutional and jurisdictional framework for cable regulation; and 3) consumer rights, responsibilities and safeguards with respect to cable. Chapter IV treats the transition period of cable's development, Chapter V describes a demonstration program, and Chapter VI provides a summary outline of policy recommendations. An appendix presents the current regulatory framework. (PB)

ERRATA SHEET

CABINET COMMITTEE REPORT ON CABLE COMMUNICATIONS

PAGE	PRINTED	CORRECTED
VI	Requirement on adequate channel capacity	Requirement of adequate channel capacity
23	No Government agency does not . . .	A Government agency does not . . .
45	unautheorized	unauthorized

More copies of the Cabinet committee report on cable communications may be obtained from:

Superintendent of Documents
Government Printing Office
Washington, D. C. 20402

Price: $1.50
Stock Number: 4000-00304

CABLE

U.S. DEPARTMENT OF HEALTH,
EDUCATION & WELFARE
NATIONAL INSTITUTE OF
EDUCATION
THIS DOCUMENT HAS BEEN REPRODUCED EXACTLY AS RECEIVED FROM THE PERSON OR ORGANIZATION ORIGINATING IT. POINTS OF VIEW OR OPINIONS STATED DO NOT NECESSARILY REPRESENT OFFICIAL NATIONAL INSTITUTE OF EDUCATION POSITION OR POLICY

COMMITTEE MEMBERS:

ROBERT H. FINCH
LEONARD GARMENT
HERBERT G. KLEIN
PETER G. PETERSON
ELLIOT L. RICHARDSON
GEORGE ROMNEY
CLAY T. WHITEHEAD, Chairman

REPORT TO THE PRESIDENT · The Cabinet Committee on Cable Communications · 1974

Library of Congress
Catalogue No. F4–600004

For sale by the Superintendent of Documents, U.S. Government Printing Office
Washington, D.C. 20402 - Price $1.50

Stock Number 4000-00304

OFFICE OF TELECOMMUNICATIONS POLICY
EXECUTIVE OFFICE OF THE PRESIDENT
WASHINGTON, D.C. 20504

January 14, 1974

DIRECTOR

The President
The White House
Washington, D. C.

Dear Mr. President:

I am pleased to submit to you the report of the Cabinet Committee on Cable Communications. As you requested, the Committee has developed proposals for a new policy that will allow cable to be integrated into our nation's communications media in an orderly way that is consistent with the principle of the free flow of information so deeply imbedded in our national traditions.

During the Committee's deliberations, we heard the views of a wide range of industry groups and nonprofit and public interest organizations, and we also examined the extensive research on cable communications. On the basis of the views we heard, the research we examined, and our own study and deliberations, the Committee has recommended a comprehensive, new national policy for cable communications.

Our goal was to insure that cable would develop as a communications medium open and available to all Americans free of private or governmental barriers to its use. Under such a policy, we believe that cable can be a communications medium that allows the great creativity of the American people to express itself.

Sincerely,

Clay T. Whitehead

CONTENTS

Introduction 1

Chapter I—
The Development of Cable Communications and the Need for a New Policy 7

Chapter II—
Cable: A Medium of Communications Available to All 17

Chapter III—
Long-range Policy Recommendations 27

Industry Structure: Distribution 29

Recommendation 1: Control of cable distribution facilities should be separated from control of programming and other services provided over the channels on those distribution facilities. 29

Recommendation 2: Common ownership or control of cable systems, interconnection facilities, and program supply services should be the only form of cable "network" operation that should be prohibted. 30

Recommendation 3: There should be no restrictions on either cross-media ownership or multiple ownership of cable systems. 31

Recommendation 4: Telephone common carriers should not control or operate cable systems in the same areas in which they provide common carrier services. 33

Industry Structure: Programming 34

Recommendation 5: The development of new programming and other information services that can be offered over cable should not be impeded by government-established barriers to the consumers' opportunity to purchase those services. 34

Recommendation 6: The programming, information or other services provided over cable should not be subject to administrative regulation of content, nor should the prices of such services be regulated by any governmental authority. 37

Recommendation 7: Incentives to create programming for cable should be fostered by full applicability of the copyright laws to cable channel users. 39

Institutional and Jurisdictional Framework for Cable Regulation 39

Recommendation 8: The Federal Government's authority over cable should be exercised initially to implement a national policy; thereafter, detailed Federal administrative supervision should be limited to setting certain technical standards for cable and applying anti-siphoning restrictions on professional sports programming. 40

Recommendation 9: Franchising authorities should have the principal responsibility for the regulation of cable systems. 41

a. Prohibition on public utility-type rate-of-return regulation. 42

b. Prohibition on grants of exclusive franchises. 43

c. Prohibition on use of franchise fees as general revenue-raising devices. 43

d. Prohibition on dedicated "free" channels. 43

e. Requirement on adequate channel capacity. 44

f. Requirement of nondiscriminatory channel lease rates. 44

g. Miscellaneous franchise provisions. 45

The Consumer and the Cable 45

Recommendation 10: There should be strong legal and technical safeguards to protect individual privacy in cable communications. 45

Recommendation 11: Governmental authorities should assure that basic cable or other broadband communications are available to residents of rural areas and to the poor. 46

Recommendation 12: Participation by minority groups in cable system ownership, operation and programming should be facilitated. 47

Chapter IV—
A Transition Period 49

Chapter V—
A Demonstration Program 57

Chapter VI
Summary Outline of Recommendations 63

A. Policies Affecting Cable System Operators 65

B. Policies Affecting Program Retailers and Other Channel Users 66

C. Policies Affecting Telephone Common Carriers 66

D. Policies Affecting the Federal Communications Commission (FCC) 67

E. Policies Affecting Franchising Authorities 67

F. Transition Policies 68

Appendix
Current Regulatory Framework 71

INTRODUCTION

"The Committee did not attempt to assign a role for cable or choose a place for it in the future of communications in this country, nor have we treated it as a modern day Rosetta stone capable of unravelling the complex problems facing this society. We have simply concluded that cable has much to offer, and it should be given an opportunity to prove its worth to the American people in the marketplace of goods and services and in the marketplace of ideas."

INTRODUCTION

On June 27, 1971, the President announced the formation of a Special Committee [1] to develop proposals for a comprehensive national policy on cable communications. In creating the Committee, the President noted that communications have a profound impact on the social fabric of our nation and that it was time to come to grips with cable communications in order to avoid the social, economic, and regulatory instability that this technological innovation could cause.

Early in the course of its work, the Committee established an interagency working group, which held many formal meetings and was in regular contact on an informal basis. In addition to the departments and agencies represented on the Committee, the working group coordinated its activities with other interested governmental organizations, including the Department of Justice and the Federal Communications Commission (FCC).

The Committee also heard the views of industry groups as well as a wide variety of nonprofit and public interest organizations. We also examined the many studies, reports, and research analyses regarding cable that have been prepared by a wide range of organizations.

After reviewing the current range of views and research, as well as conducting its own studies, the Committee has set out its conclusions and recommendations on the major policy issues regarding cable. These recommendations do not represent a master plan to create a fully operable, nationwide cable system, but rather a broad policy approach for integrating a new techology into our country's mass communications media.

In recommending the policies and types of regulation to govern cable during the foreseeable future, we attempted to forecast only about ten years into the future; we were concerned both literally and figuratively with "1984." Prediction is a perilous task in the rapidly changing communications field; and the chilling vision of "1984" can never be far from any group studying a new mass communications medium for an advanced technological society. We would rightly be held derelict in our duties if we took no steps to avoid the clear present

[1] The Committee was composed of Peter G. Peterson, Secretary of Commerce, who succeeded Maurice H. Stans; Elliot L. Richardson, Secretary of Health, Education and Welfare; George Romney, Secretary of Housing and Urban Development; plus Presidential advisers Herbert G. Klein, Leonard Garment, and Robert H. Finch. Clay T. Whitehead, Director of the Office of Telecommunications Policy, served as Chairman of the Committee, and his Office conducted the Committee's staffwork.

and future dangers of government control of communications technology, which have been foreshadowed in the literary imagination.

The Committee has examined the growth of cable communications and the governmental response to it, and we have concluded that a new policy is needed (Chapter I). At the heart of the Committee's recommendations is a proposed policy that would separate control of the cable medium from control of the messages on it. The goal of this policy is to assure the development of cable as a communications medium open to all, free of both excessive concentrations of private power and undue government control (Chapter II). Our specific recommendations (Chapter III) flow from this basic policy proposal; their thrust is that neither the local monopoly power of each cable system nor the government regulatory power necessary to prevent abuse of that private power should be extended to the programs or other content of cable's channels.

The Committee has concluded that programming, advertising, and other information and services on cable channels can be allowed to develop on a free and competitive basis, with no more regulatory power exercised over the content of this communications medium than is exercised over the print or film media. Of course some safeguards are needed for cable, as for other media, to protect individual privacy and prevent the unwanted intrusion into the home of offensive material.

The Committee recognized that many of our policy recommendations should not be implemented immediately (Chapter IV). These policies are best applied to an industry that is more developed and mature than today's cable television industry. There is, however, a need for broad agreement now on a long-range, national policy for cable. Without such a consensus, it would be difficult to take the steps necessary to move from current cable policies to the future policies that we recommend. Consequently, the Committee has recommended a transition period in which a new cable policy would evolve, and we have specified transition policies and procedures to assure that there would be a reasonably advanced and mature cable industry in existence when the long-term policies take effect.

Finally, we have proposed a federally supported program to demonstrate innovative public service uses of cable technology and to identify more precisely the technical and legal safeguards necessary to protect personal privacy in the use of cable (Chapter V). Some of the Committee members, however, were not in favor of this proposal. They expressed misgivings regarding both the need for such a demonstration program and the desirability of the Federal Government supporting an endeavor that they felt should best be left to private industry and local governments. While their concerns were shared in varying degrees by the entire Committee, a majority of the members concluded that, on balance, such a program would be appropriate, as

long as it stressed the preeminent roles of private industry and local governments and minimized ongoing Federal involvement.

The report concludes with a summary of the Committee's major, long-range policy recommendations and outlines the principal rights, obligations, and prohibitions created by such policies, as they affect cable operators, cable channel users, existing communications industries, and various levels of government.

CHAPTER I

THE DEVELOPMENT OF CABLE COMMUNICATIONS AND THE NEED FOR A NEW POLICY

"Cable offers countless Americans a chance to speak for themselves and among themselves in their own way, and a chance to share with one another their experiences, their opinions, their frustrations, and their hopes."

CHAPTER I

THE DEVELOPMENT OF CABLE COMMUNICATIONS AND THE NEED FOR A NEW POLICY

There have been many names associated with the subject matter of this report—Cable TV, CATV, broadband distribution networks, coaxial communications, and others. The names reflect the multi-channel distribution capacity of coaxial cable technology and the services such technology makes possible. Recognizing that any name chosen will be awkward or incomplete until it finds it way into general usage, we have chosen for our report the most simple and most encompassing, if not the most descriptive, name: "cable."

Coaxial cable, however, is only one type of broadband communications technology. Others, such as multi-channel microwave, may become available soon, while still others, such as fiber optics and laser communications, are further down the road. However, the substance of this report is applicable to the electronic distribution functions of such technologies, rather than to coaxial cable alone. We believe that our polices are sufficiently broad and flexible to accommodate developments in the emerging communications technologies. The policies are, by design, not overly sensitive to the technology employed, since the potential for abusive monopoly control of multi-channel distribution systems are inherent in the technologies that we foresee being used for mass communications purposes.

In attempting to create a policy for cable and other multi-channel distribution systems, the Committee found that several technical and economic facts provided an indication of the potential opportunities and risks presented by their future development.

Cable has the technical potential to become a communications medium of abundant capacity, with an almost limitless number of channels capable of carrying virtually any kind of communications.[1] Cable can distribute information to all households, schools, and places of business in an area, or it can route it to specific locations upon electronic request. It can offer a two-way capability allowing users to

[1] In this report, a "channel" means the communications capacity for the equivalent of one standard television channel (6 MHz). This communications capacity may be used, whole or sub-divided, for distributing audio, data, single-frame, facsimile, and other types of information, as well as a television signal. Thus, several "channels" of various kinds of communications might be distributed over one equivalent television channel.

529-214 O - 74 - 2

signal their wishes back up the cable and thus select particular programming or other information, or order goods and services from among those offered.

Economically, two factors are relevant. First, the cost of providing a cable channel is relatively low and is likely to decrease as improving technology expands the number of usable channels and lowers the cost of electronic equipment the customer may use in conjunction with cable. Thus, the cost of communications capacity is likely to be a small component of the overall cost of producing and distributing television programming, or of many other information services that might be offered over cable. Second, the apparent economies of scale involved as the number of channels and customers increases on a cable system mean that, in any particular neighborhood or community, only one cable system is likely to be viable and efficient. Thus, cable will be a natural monopoly in each locality.

The remainder of this Chapter is devoted to a review of cable development and regulation to the present and an examination of the need for a new public policy regarding cable communications.

The Growth of Cable

The first cable systems were simply community antenna systems (CATV) built in the late 1940's to bring better television reception to isolated communities in mountainous parts of Pennsylvania and Oregon. In these early CATV systems, for a monthly fee, customers' homes would be linked by coaxial cable to a tall antenna which could receive signals from television broadcast stations.

The first cable operators were usually local businessmen, who encountered little regulation. The FCC chose to exercise no authority over cable, and most state governments took little notice of it. Local governments became the regulators during cable's first decade largely because CATV operators needed permission to use public property and rights of way to lay their cables. The nascent television broadcast industry also paid little attention to cable systems aside from vaguely endorsing them as a means of extending and increasing the size of their viewing audience.

Despite the limited number of channels CATV systems could transmit, this service spread rapidly throughout many small towns in this country. In 1952, there were some 70 cable systems with 14,000 customers, while 10 years later there were an estimated 800 systems and 850,000 customers.

The decade of the 1960's was a period of even greater growth for cable. New technology increased the potential channel capacity of cable systems to 20 or more channels by the end of the decade. A number of cable systems were not only providing improved reception of

nearby broadcast stations, but were also "importing" additional broadcast signals via microwave links from television stations in distant cities. Dozens of systems also began to offer some form of locally originated programming, often by transmitting pictures of news service or stock market ticker tape machines, time and weather information, and local advertisements.

Now, cable is no longer simply CATV. It is no longer simply a conduit for television distribution to the home. And it is no longer a "cottage industry." From its origins as a predominantly rural and small town industry, cable is now beginning to come to some larger cities. It has grown to an industry composed of over 3000 systems in 1973, connecting almost 8 million households and continuing to grow at a rate of more than ten per cent per year.

The attitudes of the investment community toward cable have fluctuated widely in recent years. Currently, cable is facing a slowdown in the rate of investment flowing to construction of new systems in major cities, in part due to tight money markets and in part to investor disenchantment in reaction to over-optimistic views of cable profitability and growth.

The actual prospects for cable growth, however, have not fluctuated appreciably. In fact, research and development are producing lower-cost distribution methods and equipment for specialized home use of cable programming and other information services. It is reasonable to expect that cable's recent growth trends will continue or even accelerate.

Thus, cable is on the verge of becoming a new medium of communications in its own right, a vehicle for a wide variety of new services, and big business.

Cable Regulation and the Need for a New Policy

The changes in cable technology and in the economic and social importance of cable should have been accompanied by changes in the public policy that govern its regulation. Yet, the regulators' perception of the cable medium has lagged far behind its evolving reality.

Federal regulation of cable is presently based upon the Communications Act of 1934, which deals with technologies that can accommodate only a limited number of signals. Lacking Congressional guidance and uncertain of its authority, the FCC at first denied that it had jurisdiction over cable. Through the late 1950's and early 1960's the Commission maintained this position, and in 1959 and 1966, it sought legislation expressly conferring such jurisdiction. During this same period, however, the Commission gradually moved to regulate cable indirectly by exercising its unquestioned authority over the

other communications services that cable was using. The FCC began by placing restrictions on cable systems that were served by the microwave facilities of telephone companies and other communication common carriers. By 1966, the FCC had asserted broad regulatory authority over all cable systems, principally with respect to retransmission of television broadcast signals, and, in effect, froze cable growth in the nation's top 100 television markets. In 1968 the Supreme Court upheld the FCC's action as "reasonably ancillary" to the Commission's power to regulate television broadcasting.[2]

The FCC extended its jurisdiction over cable in February, 1972, when it issued rules that dealt not only with the retransmission of television broadcast signals, but also governed access to, and use of, nonbroadcast cable channels. At the same time, the FCC established technical standards and divided regulatory jurisdiction between the Federal and local levels of government. Cable regulation under the FCC's current rules is discussed in the Appendix to this report.

The legal basis for the FCC's broadening of its authority over cable beyond retransmission of broadcast signals was narrowly upheld by the Supreme Court in June, 1972, in a case challenging the FCC's authority to require cable operators to originate programs. The deciding vote in the 5–4 decision was cast by Chief Justice Burger who stated in his concurring opinion that:

> "Candor requires acknowledgment . . . that the Commission's position strains the outer limits of even the open-ended and pervasive jurisdiction that has evolved by decisions of the Commission and the courts."

The Chief Justice added:

> "The almost explosive development of CATV suggests the need of a comprehensive reexamination of the statutory scheme as it relates to this new development, so that the basic policies are considered by Congress and not left entirely to the Commission and the courts." [3]

Presumably the FCC could continue this process of step-by-step rulemaking for cable under court interpretations of its existing authority but, as Chief Justice Burger noted, the jurisdiction of the FCC to regulate cable derives from a very limited foundation in the Communications Act of 1934, which created the national policy for broadcasting's use of the public airwaves. That policy was designed for a scarcity of outlets, but cable needs a policy designed for a communications medium of abundance and diversity.

If we do not create a new public policy for cable, it seems clear that cable will continue to develop and be regulated in the policy mold

[2] United States v. Southwestern Cable Co., 392 U.S. 157 (1968).
[3] United States v. Midwest Video Corp., 406 U.S. 649, 675–76 (1972).

created for broadcasting. To some extent, this choice already is being made by the FCC, almost by default, since neither the Congress nor the Executive Branch has devised an alternative policy. In the absence of an alternative policy view, cable is regarded simply as an extension of, and a supplement to, the broadcast television industry. It is treated as a secondary service, albeit one that could engulf the primary broadcast service if cable's many channels are used to their full capacity. The perception of cable's multi-channel capacity as a threat to broadcasting could retard cable growth and even limit full use of all its capacity in order to protect broadcasting's financial viability.

But cable is not merely an extension or improvement of broadcast television. It has the potential to become an important and entirely new communications medium, open and available to all. The Committee has concluded, however, that cable may never become what it can become if it continues to be constrained by the policy of the Communications Act.

The Need for Federal Action

The new public policy that is needed for cable communications must be created through a conscious and deliberate effort which will anticipate both the risks and opportunities of cable development.

We are approaching what has been characterized as a "post-industrial" society in which knowledge and information will be major factors in economic enterprise as well as in personal growth and satisfaction. In the past, the expansion and application of any new technology was often encouraged without particular concern for its future impact. Many Americans have accepted technological change almost as a good in itself. While our enthusiasm for technological change has been almost without bounds, in earlier times there was more room to compensate for error. If somehow technology went awry in one place or at one time, correctives could be applied in a different place or time.

But the era of haphazard technological development is drawing to a close. We can no longer permit technological innovation to "just happen," and then attempt to "regulate away" the adverse effects. This is especially true of a communications technology such as cable, which involves the delivery and exchange of knowledge and information. Because we have a legal and social system that fosters, and is dependent upon, a free flow of information so that a well-informed citizenry can guide its own destiny, the question of the relationship between the private communications media and the government is, in many ways, the ultimate issue in a free society. If the achievement of a new relationship between government and the private cable medium is not anticipated but left to chance, the free flow of diverse information and

ideas that is protected by the Constitution could be endangered. This is the most important reason for a clear and far-sighted policy for cable technology on the Federal level: the overriding national interest in freedom of expression.

There is also another reason, less philosophical, but very important. Cable is not only a medium of expression, it is an industry—an employer of labor and capital, a producer of goods and services, and a contributor to the overall productivity of our economy. Cable is an industry which is closely linked to several major national industries including electronic data processing, telephone, television and radio broadcasting, the motion picture and music industries, and communications satellites. Although each cable system is a local activity, it distributes television signals in interstate commerce. Because of these characteristics, cable requires a consistent and coherent national policy.

Recognition of the need for a national policy, however, must not preclude an appreciation of the important and often diverse local interests in the development and performance of cable systems. Localism plays as important a role in our system of mass communications as it does in our system of government. Cable can fulfill its promise of providing a medium for a multitude of diverse voices serving both local and national purposes only as long as state and local governments are given a substantial role in determining the policies for cable communications services.

The Nature of the Choice to be Made

Having concluded that a new policy is needed for cable communications, we felt it important to clarify the issues that underlie the policy choice to be made.

Many questions have been raised concerning the ultimate implications of cable for society. Will people use all the services that full development of cable promises? Will they be able to absorb all the information cable can place at their fingertips or will it result in "information overload" and lead to increased confusion instead of increased knowledge? Will multiplying the choices available to us enhance the differences among us and result in social and political fragmentation? Will there be a "fractionalization" of audiences because of cable; and if so what will be its effects on social stability and on the economic viability of the broadcasting and cable industries? Will there be a loss of the sense of community and nationhood that has been enhanced by television broadcasting? Will there be an alienation of group from group, region from region; an unravelling of the social fabric and the development of a parochial outlook to replace a national and international outlook? Will a President be able to command

all the major television channels to make an address to the nation? If not, how will this affect the political and governmental processes?

Every new medium of communications has posed similar questions, and we have no way of providing definitive answers to such questions in advance. We are certain, however, that the response to the challenges posed by new communications technologies must not be to stifle their growth because of fears about their effect. A democratic society must have faith in the good sense and resilience of its citizens and institutions in dealing with advancing technology. The extent to which we as individuals and as a society are able to benefit from the development of cable communications depends upon the wisdom and ingenuity displayed by private citizens, private industry, and governmental agencies.

We believe that cable development has the potential of creating an electronic medium of communications more diverse, more pluralistic, and more open, more like the print and film media than our present broadcast system. It could provide minority groups, ethnic groups, the aged, the young, or people living in the same neighborhood an opportunity to express, and to see expressed, their own views. Yet it would also enable all of these groups to be exposed to the views of others, free of the homogeneity which characterizes contemporary television programming.

Cable offers countless Americans a chance to speak for themselves and among themselves in their own way, and a chance to share with one another their experiences, their opinions, their frustrations, and their hopes. Rather than increase the alienation of individual from individual and group from group, cable could combine the shared experience of national television with a type of active participation in the political and social process that was common in the days before urbanization eroded the opportunity for personal involvement in events that affected the community.

It is hazardous to attempt to predict cable's place in the future of communications. Even more than many other new technologies, cable has a host of zealous proponents who wax enthusiastic about a future in which cable will serve as an electronic genie ready to provide a rich variety of services to mankind. Others are doom-sayers who see cable as the instrument that will lead us inevitably into "1984," serving as the final extension of the industrial revolution which will make us the slaves of technology, leading lives devoid of freedom or privacy.

Still others see cable as having almost no impact. They predict it will struggle along as a minor supplement to broadcast television and will be shorn of all its glamour as soon as another new technology captures the imagination of a fickle constituency of academics, technocrats, newspaper feature writers, and assorted futurists.

The Committee did not attempt to assign a role for cable or choose

a place for it in the future of communications in this country, nor have we treated it as a modern day Rosetta stone capable of unravelling the complex problems facing this society. We have simply concluded that cable has much to offer, and it should be given an opportunity to prove its worth to the American people in the marketplace of goods and services and in the marketplace of ideas. The proper role of government policy is to adopt, consciously and deliberately, a policy which insures that access to and use of cable's channel capacity are not constrained by any one force, whether it be the cable system operator's power over his channels or government regulation to deal with that power.

CHAPTER II

CABLE: A MEDIUM OF COMMUNICATIONS OPEN TO ALL

"At the heart of the Committee's recommendations is a proposed policy that would separate control of the cable medium from control of the messages on it. The goal of this policy is to assure the development of cable as a communications medium open to all, free of both excessive concentrations of private power and undue government control."

CHAPTER II

CABLE: A MEDIUM OF COMMUNICATIONS OPEN TO ALL

If cable is to become a constructive force in our national life, it must be open to all Americans. There must be relatively easy access at one end of the cable for those who wish to promote their ideas, state their views, or sell their goods and services; and at the other end, the consumer must have a meaningful freedom of choice to select from among a diverse range of cable programming and services. This unfettered flow of information is central to freedom of speech and freedom of the press which have been described correctly as the freedoms upon which all of our other rights depend. These freedoms are no less essential in the days of cable than in the days of soapboxes and pamphlets.

Our nation's theory of democratic government is based on the principle that the power to make decisions affecting the flow of information to and from the individual must be dispersed so that irresponsible, inequitable, or simply bad decisions will not have a pervasive, irreversible effect. In view of this principle, both governmental power and excessive concentrations of private economic power over the flow of information have been viewed as inimical to the achievement of a free and open society. The long-standing and deeply-felt opposition to concentrated private power over the media stems not simply from a belief that such power inevitably must be antithetical to this central principle of our Government. Although this reason continues to be valid, traditionally the excessive concentration of private power also has been opposed because it has often been used as the pretext for Government's own intrusive entry into the communications media. Given the technological and economic imperatives of cable, excessive concentrations of both private power and government power threaten the unfettered flow of diverse information and ideas in the cable medium.

The private power of the cable system operator is potentially great, because of the local monopoly characteristics of cable. Unless restrained in some manner, the system operator could control all of the channels on his cable system, which could constitute the bulk of the channels of electronic communications in a particular locale. There are two ways to restrain this power. One is a detailed governmental

prescription of the affirmative obligations of the cable operator, requiring him to use his power in socially desirable ways. The second alternative is to limit the number of channels over which the cable operator has control of program content and to require that the bulk of channels be leased to others. By the first alternative, the Government would seek to regulate the *use* of private power; by the second, it would seek to limit its *extent*.

The first alternative was chosen for broadcasting—a policy prescribing the use of private power. Under this approach, the FCC enforces affirmative programming obligations upon the broadcaster to regulate exercise of his power over program content. While it is difficult to take issue with many of the goals underlying such Government-imposed program requirements, they result in a regulatory framework in which the Government has the power to oversee the content of a medium of communications and expression. The existence of the power affects the relationship between the Government and the broadcast media, and creates the constant danger of unwarranted governmental influence or control over what people see and hear on television broadcast programming.

The Separations Policy

The Committee has chosen the second alternative—a policy limiting the extent of private power, rather than asserting detailed regulatory control over the use of that power. We recommend adoption of a policy that would separate the ownership and control of cable distribution facilities, or the means of communications, from the ownership and control of the programming or other information services carried on the cable channels. By separating the distribution function in cable, which is a natural monopoly, from the programming functions, which can be highly competitive, the dangers of governmental intrusion and influence in programming can be avoided while the wide variety of competitors vying for the public's attention can be expected to produce a diversity of programming.

This policy would create an essentially neutral distribution medium and require control of the medium to be separated from control of the messages on it. The effects of private economic power on the means of distribution would cease to be a danger to the free flow of information, and there would be little need for the continued application, or threatened application, of Government power. The cable system operator would be obliged to deliver the messages of channel users with as little regard to content as the Postal Service has for the content of the print media. Ideas would have to win their influence in the marketplace, rather than acquiring exposure through the regulatory process.

To place the separations policy in perspective, it is important to understand the functions of the mass media, and the present extent of Government regulation of the various mass media.

The Functions of the Mass Media

Three basic kinds of functions are involved in the mass media: (1) the creation or compiling of information or entertainment; (2) the selection or editing of this information; and (3) the transmission or distribution of the information to the public.[1]

The owners of the various mass media differ markedly in the nature and extent of their involvement in each of these three functions. The information and entertainment that appears in newspapers, for example, is written primarily by reporters and writers who are employees of the newspaper, and this material is selected and edited by other employees. The newspaper is often printed on the paper's own presses and usually distributed throughout the metropolitan area in the newspaper's own trucks. It ultimately reaches the reading public through independent newsstands and retail stores or through delivery services, which may be owned by the newspaper. In magazine and book publishing, there is less of this "vertical integration"[2] of the media functions than in newspaper publishing. A book publishing company is often no more than a suite of offices from which representatives of the publishing company purchase manuscripts from writers, and then contract with printing companies to print them. The books are shipped through the mails and various express companies to a wide range of independent retailers, who sell the books to the reading public. While many magazines employ their own writers, they often contract out most of the functions involved in producing and distributing magazines. In television broadcasting, the essential functions of selection and transmission are, by law, performed by the same entity, the television station; and the station employees may create the programming as well.

---

[1] The terms "media" and "mass media" are often used with great ambiguity. Generally, "medium" refers to the various technological means of producing or distributing information such as newspapers, magazines, radio broadcasting, or motion pictures. The term "media" usually refers to the industries or businesses that provide information or entertainment to the public. A medium can have mass availability, technologically and economically, but it may or may not collect a mass audience around a particular presentation. For example, television today is a mass medium in both senses, but hobby magazines collectively constitute a mass medium only in the sense of availability to a large audience; millions of copies of such magazines could be printed and distributed inexpensively, but far fewer would be bought and read.

[2] A firm is said to be vertically integrated if it performs a series of successive functions in the production and distribution of its products. As an example, a petroleum firm that produces crude oil, transports it, refines it, and again distributes it to its own service stations would exhibit a high level of vertical integration. An enterprise is horizontally integrated if it operates a number of facilities that produce the same products. Examples are chain stores, and, in the cable industry, the so-called multiple system owners who operate a number of geographically dispersed cable systems.

Government Regulation Common to All the Media

Despite the differences among the various mass media, Government control or regulation of media power is, in many respects, reasonably uniform.

To the extent that private power over a medium of mass communications takes the form of economic control, Government regulation is very little different from its regulation of any other business. For example, the antitrust laws apply to the media to prevent excessive concentration of economic or market power, just as they apply to the production and distribution of other goods and services. Indeed, to the extent that such laws and regulations prevent the assertion of significant private power over the dissemination of ideas, information, and entertainment, Government-imposed limits on the growth and exercise of private economic power also foster competition in the marketplace of ideas.

The communications media, however, because they are the media of expression, have another type of power that arises simply through the force or attractiveness of the ideas, information, or entertainment provided. It is here that Government power is and must be strictly constrained lest it stifle the opportunities for the easy access and diversity of choice that the Government in a free society is supposed to foster. Government attempts to limit or suppress the flow of information have been regarded as particularly pernicious and are explicitly prohibited under the First Amendment's injunction that: "Congress shall make no law . . . abridging the freedom of speech, or of the press . . ."

But even within the framework provided by the deeply rooted legal and philosophical principles embodied within the First Amendment, the exercise of Government regulation of the media goes beyond the regulation of the media's economic power. Government, especially state and local governments in the exercise of their police powers, protects the individual's right to be free of unwarranted and unwanted intrusions. Therefore, the application of certain laws regarding obscenity, pornography, privacy, libel, slander, criminal incitement, and the like are deemed by the Supreme Court to be consistent with the First Amendment. Similarly, Government properly may regulate to some extent which means of communication may be used to disseminate which types of information. Because of the need to strike a reasonable balance among competing constitutional rights and considerations, each means of communication presents its own problems in defining the nature and the permissible scope of this type of Government regulation. For example, certain materials cannot be sent through the mail though they can be sold on newsstands; and a film

that could be shown in a theater could result in criminal penalties if broadcast on television.

Government Regulation Unique to the Broadcast Media

The broadcast industry, in common with all the other mass media, is subject to Government limits on its economic power, and the exercise of Government "police power"-type regulation of its information content and its transmission function. It is only in one significant respect that Government regulation of broadcasting is vastly different from the *laissez faire* approach that the First Amendment requires for the other media of expression.

In broadcasting, Government power is used to shape and direct the content of programming toward various social ends by requiring, or indirectly coercing, the presentation of various types of information and programming in the name of the public interest. Such aspects of broadcast regulation as the encouragement of certain types of programs by means of the license renewal process, the concept of broadcaster responsibility for all information disseminated over the airwaves, the equal time requirement for political candidates, and the Fairness Doctrine requiring "balance" in the discussion of public issues, have no counterparts in the non-broadcast media. No Government agency does not direct a documentary film producer to present all sides of a controversial issue, or a magazine publisher to devote "equal space" to all candidates for an elective office, or a newspaper to devote some of its space to children's features or stories about minority group problems.

It is only in the broadcast media that the First Amendment has been interpreted to permit governmental efforts to foster the expression of certain ideas or information by intruding upon the creation, selection, and editing functions of the private media owners. Why this difference? The answer turns upon the unique power of the broadcaster in the marketplace of ideas.

The dominant characteristic of the broadcast media, especially television, has been the scarcity of usable frequencies or channels. This scarcity has facilitated an economic concentration in the broadcast industry that, because of the governmental role in assigning frequencies for use by the industry, is in effect a Government-conferred monopoly of broadcast outlets. In conferring this benefit upon broadcasters, the Congress has also decreed that broadcasters, by law may control and must exercise responsibility for both the transmission and the programming functions of their stations. This combination of "vertical integration" of the media functions and the scarcity of outlets gives television broadcasters great power over the flow of entertainment and

ideas. To offset such power, there was an inevitable expansion of Government regulatory power over the broadcast media; and it is not surprising that this regulation of the medium has carried over into regulation of the broadcaster's programming.

As a practical matter, to regulate the means of communication, apart from the programming, when the two are controlled by the same entity, requires powers of discipline, distinction, and restraint by Government that are perhaps unattainable. The regulation of programming tends to become an end in itself, rather than a means of achieving constitutional goals for the free flow of information. Government is driven to consider the practical effects of its regulation in terms of the effects on program content. What information and which speakers should be given preferential access; and, in the final analysis, what should the American public see and hear? These questions inevitably arise, not only when the Government chooses to control information through prior censorship, but also when it seeks to require the presentation of certain types of information through affirmative programming requirements.

The end result of the fundamental policy choices made for broadcasting is that it is not a medium of communications open and available to all. The originators and producers of programming, advertisers, and individual citizens can gain access to the medium only through the broadcast industry or through a regulatory process that uses Government power to require the broadcasting of certain types of material. There is a very real danger that access to cable will be similarly constrained, unless an appropriate policy is chosen.

The Print Media as a Model for Cable

Cable's multi-channel technology, together with the economic imperatives of a medium that is a natural monopoly, could lead to an even greater concentration of power than exists in broadcast television. When a single cable operator has the power to control the programming and information content of all the channels on his system, his monopoly power over the cable medium of expression is nearly absolute. Therefore, detailed and prescriptive regulation by Government is well on its way. Federal rules already require the dedication of certain channels on cable systems for such purposes as local government use; other rules apply the Fairness Doctrine, the equal time requirements, and other aspects of "public interest" program regulation to programs originated by the cable operator. If broadcast history is any guide, this program regulation will expand until access to cable is circumscribed by Government regulations.

The only way to avoid the broadcast regulatory model and allow cable to develop as a medium of communications open and available in a manner similar to the print or film media is to preclude the vertical integration of the programming and distribution functions in cable. In this way, the cable operator's distribution monopoly would not produce any concentration of power over free expression in the use of cable channels and would offer no pretext for Government control of programming or other information distributed by cable.

Thus, the separations policy would limit both private control over cable channels, and the Government regulation intended to offset that control. Under the separations policy, cable may be able to offer Americans the opportunity, diversity, and richness that characterize the print and film media in this country. Cable would offer unfettered access for those who wish to use its channels to promote their ideas, state their views, or sell their goods and services; and the cable customer would have the freedom to pick and choose from among a diverse range of entertainment, information, and services.

529-214 O - 74 - 3

CHAPTER III

LONG-RANGE POLICY RECOMMENDATIONS

"We must guard against allowing regulation of the communications media to become an end in itself rather than a means of achieving the free flow of information and the free expression of ideas that are so vital to a democratic society."

CHAPTER III

LONG-RANGE POLICY RECOMMENDATIONS

This chapter sets forth the Committee's policy recommendations for a developed cable industry. Discussion of the recommendations is in three parts:

—an industry structure for the 1980's and beyond;
—an institutional and jurisdictional framework for cable regulation; and
—the relationship between the consumer and the cable.

As stated in Chapter II, the Committee attempted to anticipate and deal with the adverse effects of concentrated power in a vertically-integrated cable industry. We recognize, however, that full implementation of the policy is not appropriate for the developing cable industry of today, and, therefore, in Chapter IV the Committee recommends a transition period during which the full policy gradually would be implemented.

Industry Structure: Distribution

Recommendation 1: ***Control of cable distribution facilities should be separated from control of programming and other services provided over the channels on those distribution facilities.***

Under this recommendation, the principal business of the cable operators [1] would be to lease their channels, or sell time on those channels, to individuals or organizations that wish to offer programs or other services to the public.[2] The cable operator would be precluded from having any financial interest in, or relationship with, those

[1] The cable operator is the person or entity holding the cable franchise or effectively controlling, through ownership or other arrangements, the operation of the cable system in the geographical area covered by the cable franchise. The cable "system" consists of the facilities used for "head-end" receive-transmit, switching, storage and control functions; facilities used for local distribution of signals; subscriber "taps;" and related equipment and functions. We recommend, however, that the separations policy not apply to those limited capacity cable systems whose operators do no more than: (1) retransmit the signals of television and radio broadcast stations that are defined by the FCC as "local" to the cable system's franchise area; and (2) provide "weather scan" or teleprinter-type information service on no more than one or two standard television channels.

[2] Even if the cable system owner does not control the content on all channels, he will still have an incentive to restrict access to his system by others if he controls and profits from a significant proportion of the channels, thereby defeating the purpose of the separations principle. It would, however, be consistent with this principle to allow the system operator

leasing channels or buying time on his cable system. This would preclude common holdings in stock or other securities; loan arrangements; or any other interest in the channel user's enterprise.[3] If the cable system operator were to have such an interest in a channel user, he would have an economic incentive to favor the user in which he had a financial interest.

Simply requiring the system operator to treat all channel users on a non-discriminatory basis without prohibiting him from having an economic interest in a user would not be adequate to prevent anti-competitive behavior. The cable operator could, for example, charge artificially high, but still "non-discriminatory," rates to users of his channels and use the excess profits from his system ownership activities to subsidize his programming affiliate. This cross-subsidization would place the other channel users at a severe competitive disadvantage. Moreover, requiring "arms length" transactions between companies in the same corporate structure and prohibiting cross-subsidization present severe enforcement problems. Such problems typically lead federal or state enforcement agencies to impose rate-of-return, public utility-type regulation in an effort to control cross-subsidization and other anti-competitive abuses.

The Committee believes it is better to establish policies at the outset that deal with the causes of such adverse effects than to create the incentives for abuse and invite detailed Government regulation to deal with the effects.

Recommendation 2: ***Common ownership or control of cable systems, interconnection facilities, and program supply services should be the only form of cable "network" operation that is prohibited.***

It is likely that landline, terrestrial microwave, communications satellite systems, or other means will be used to interconnect cable systems on an *ad hoc* or long-term basis to create various national or regional networks for program distribution. Therefore, the Committee considered whether implementation of the separations principle must be extended beyond the local cable system itself to prevent the adverse effects of regional or national cable monopolies.

---

to continue to have control over the channels used for retransmission of the local and distant television broadcast signals authorized under the FCC's cable television rules effective on March 31, 1972 (*i.e.*, all local and "significantly viewed" stations, plus the number of distant signals allowed on the basis of market size of the cable system's community), as well as control over the channels used for retransmission of radio signals authorized by the FCC. Program content of such channels is, of course, under control of the broadcast stations that originate the signals retransmitted by the cable operator. It also would not be inconsistent with the separations principle to allow the system operator to have program control over one or two additional channels. Of course, the policy would not preclude the presentation of a program produced by a firm in the same corporate structure as the cable system owner, as long as the channel lessee is independent of both the cable system and the program producer.

[3] This requirement would not preclude the system operator from having variable rates for channel leasing, as long as there is no discrimination among comparable channel uses or users (see Recommendation 9).

There are four functional entities that must be taken into account when applying the separations policy to such network operations: (1) the cable system operator; (2) the program retailer, who uses channels on local cable systems to offer programs to the subscribers; (3) the program supplier or producer, who provides programs to the retailer; and (4) the interconnection facility operator, who provides intersystem transmission capacity to connect one or more channels on several cable systems. Naturally, there may be overlaps among these entities. The cable system operator may be a multiple system operator who offers channels for lease on his many systems to a single program retailer. Moreover, there will be instances in which the program retailer and the program supplier are one and the same.

In one form of networking, the program retailer would lease channels, or buy time, on a number of local cable systems and on interconnection facilities, in order to reach a large number of geographically dispersed viewers. This type of networking would pose no threat to the public interest unless a single program retailer controlled a major portion of the available local cable system or interconnection capacity or entered into anti-competitive agreements with the operators of these facilities. Such instances of abuse can and should be dealt with under the antitrust laws, and there is no reason to prohibit networking of this type.

A second form of networking would involve the common ownership or control of local cable systems and interconnection facilities by a single multiple system operator. This, too, would pose no competitive threat to programming competition, as long as there is nondiscriminatory access to cable channels and competitive availability of interconnection facilities.

The only form of networking that necessarily raises concerns sufficient to warrant its prohibition is the common ownership or control of cable systems, interconnection facilities, *and* program supply services. In these circumstances, program retailers, who are the pivotal point in the competitive supply of services to the viewers, would be caught in such a cable network's vise, making realistic competition impossible.

The common ownership of any other combination of functions, except cable ownership and program retailing, requires no special prohibition. Application of the antitrust laws should be sufficient to police possible abuses arising from other forms of joint ownership.

Recommendation 3: ***There should be no restrictions on either cross-media ownership or multiple ownership of cable systems.***

We recognize the potential dangers in allowing newspaper publishers or broadcasters to own cable facilities. Common ownership

of media that are nominally competitive in the same markets may limit the range of ideas discussed and reduce the competition for advertising revenues and, in some cases, for audiences.

However, in the long-run, cable development could alter significantly the competitive relationships among the broadcast and print media and the cable industry. It would not constitute economic protectionism to give some consideration to those industries, especially television broadcasting, that would bear the brunt of technological innovation and competition from a successful cable industry. Broadcasters and publishers should have an opportunity to own or invest in cable systems in the communities they serve without being required to divest themselves of their present media holdings in those markets. Although broadcast stations would thus be allowed to a limited extent to engage in both program origination and cable operation in the same community, they would still be bound by all the restrictions on program control placed on cable operations.[4] There would, of course, be no prohibition against broadcasters or newspaper publishers owning cable systems outside the markets they already serve with these other media outlets.

It is reasonable to expect that most broadcasters and publishers would prefer to offer programming on cable channels that they lease rather than to own cable systems, and that should be allowed. On balance, the separations policy, with its assurance of access by all channel users, considerably lessens any potential harm which may arise from the cross-media ownership of cable systems. Therefore, no special restrictions on such cross-ownership appear to be necessary. Excessive concentrations of cross-media ownership would, however, be prohibited by normal operation of the antitrust laws, as would excessive concentration of control over broadcast-newspaper-cable channel content.

The Committee also considered the question of limiting the number of cable systems any one firm may control or the number of customers it may serve. The present trend towards increased concentration of ownership by "multiple system owners" would present serious problems if cable operators were allowed to control the use or content on all or most of their channels. Although the separations policy would significantly lessen those dangers, some anti-competitive dangers and the risk of technological stagnation presented by large-scale multiple system ownership would remain and should be dealt with by rigorous enforcement of the antitrust laws. However, such enforcement should be tempered by the usual "infant industry" con-

[4] Their position would be little different from the cable operator who was permitted to originate or control programming on one or two channels. However, the television broadcaster's over-the-air channel would be counted as one of the one or two cable channels on which the system operator can originate or control programming.

siderations that have generally been found to be in the public interest with respect to developing new industries.

As a final matter affecting ownership of cable systems, the Committee considered the appropriateness of municipal ownership. We concluded that, while there was no need to prohibit such ownership by law, it would be unwise for municipalities to function as cable operators. For the foreseeable future, cable system ownership will be a capital-intensive enterprise that may well be subject to rapid technological change and associated financial risks. As long as private entrepreneurs are willing to do so, it is almost certainly an unsound allocation of tax dollars for municipalities to underwrite such ventures. Moreover, with a financial interest in the entity being regulated, it would be inappropriate for a local authority to function simultaneously as the "regulator" and operator of the cable system.

Recommendation 4: ***Telephone common carriers should not control or operate cable systems in the same areas in which they provide common carrier services.***

Cable systems share some of the characteristics of existing common carrier telephone systems. Both provide direct electronic connections between the subscriber and a central office; thus, both are capable of identifying and serving individual customer needs. Although most existing cable systems provide only one-way distribution of conventional television programming, the systems could also provide subscribers with a capability for signaling back up the cable to order particular programming or other information services.

Similarly, telephone networks intended to carry two-way switched voice communications have the potential to carry other one-way and two-way information services, although they cannot provide television or certain data services with present voice communications technology.

Unless limited in some way, widespread expansion by telephone companies into the cable business could stifle the development of competitive cable communications service. The local telephone companies' franchise arrangements and rights-of-way, their established marketing and operating organizations, and the opportunities they have for cross-subsidization from existing monopoly services could work to obstruct cable development, as could the heavy capital needs of telephone companies to extend and improve telephone service. Moreover, the size, vertical integration, and long-distance interconnection role of the nationwide Bell System, if extended to cable communications, could make it very difficult to maintain any realistic competition in communications.

The Committee has concluded, therefore, that the present FCC rule, which prohibits telephone companies from owning or controlling cable systems within their telephone service areas, should be retained. Telephone companies should, however, be allowed to continue to offer cable system operators transmission facilities for local distribution under the type of "lease back" arrangement that is currently in use.[5] Moreover, the carriers should provide cable operators with nondiscriminatory access to the carriers' poles, conduits, and other rights of way.

While telephone companies should be precluded from control of cable systems, they should be allowed to compete with cable systems in offering communications capacity for such services. After the cable industry is fully developed, there are likely to be a range of communications and information services that could use either cable or telephone systems. It will, therefore, be important for cable franchising authorities and utility commissions to make certain that the cable system, with its local monopoly of broadband distribution facilities, and the telephone company, with its monopoly over switched public telephone service, can compete fairly with each other and with others, without cross-subsidization or other anticompetitive practices.

Industry Structure: Programming

Recommendation 5: ***The development of new programming and other information services that can be offered over cable should not be impeded by Government-established barriers to the consumers' opportunity to purchase those services.***

At present, the range of information and entertainment available in television is quite limited. In many instances, the viewer in prime time may choose from among only three network programs, one educational television program, and perhaps one more program, which may well be a network rerun, offered by a local station not affiliated with a network. Because most of these programs are designed to attract as large an audience as possible, they are often geared to the lowest common denominator of viewers' interest.[6] There are few opportunities for the viewer to see programs of special interest or emphasis even though that "special" interest may appeal to millions of people over the course of a week or a month. Moreover, the limited

---

[5] This would not include operation of cable system "head ends," switching or other functions not associated with actual signal transmission.

[6] This is not meant to be a criticism of the intellectual, artistic, or quality of television programming, but simply a recognition of the effect upon programming of channel scarcity and the vertical integration of TV broadcasting. It is unlikely that very many Americans are reading Shakespeare's works at any given hour either, but our print media—unlike broadcast television—make them economically available in such a fashion that we can read them when we choose to do so.

number of broadcast television outlets reduces television's utility to advertisers who wish to reach only a particular segment of the mass audience. The high cost of the relatively scarce TV broadcast advertising time makes it uneconomic for such advertisers to purchase commercial time.

With cable, the quality and diversity of advertiser-supported programming can be expected to be greater than it is now with television broadcasting. Cable's larger number of channels means advertising time will not be as costly as it is in television broadcasting, and this alone could attract more advertisers. Advertisers could also avoid the need to pay for exposure to audiences they have no interest in reaching and could support on a regular basis new types of programs appealing to limited audiences.

While increasing the overall magnitude of advertiser-support of cable programming is important to both the viewers and the advertisers, full opportunity for the viewer to express the intensity of his program preferences, and to satisfy those preferences, can be assured only if the consumer also is able to make direct payments for television programming, as he does for magazines, books, and records.

The Committee recognizes that there are some valid concerns regarding the growth of subscriber-supported programming or "pay-TV." It is argued that some people may not be able to afford to purchase information or entertainment in the quantity they may desire. This is true; just as it is true that some people cannot now afford to buy as many books, magazines, newspapers, or records as they might like. But the creators of programs and other information services should not be prohibited from selling to anyone but broadcasters and advertisers; to do so would deny to the public many services and benefits obtainable in no other way. Especially in the constitutionally protected media, the problem of poverty should not be dealt with by governmental restrictions of the range of choices open to consumers. Moreover, from the standpoint of the poor, pay cable may be regarded realistically not as a more expensive form of television, but as a cheaper form of motion picture theater, sports arena, or concert stage entertainment. They may be able to purchase more of this type of entertainment programming over cable than they could otherwise afford.

Another frequently voiced concern is that some of the programs presently supported by advertisers may be withdrawn from "free" television to be sold instead directly to viewers. The FCC now has rules forbidding direct sale to viewers of certain types of sports programs, feature films, and other entertainment programming to prevent this program "siphoning." Of course, viewers already pay indirectly for advertiser-supported television since the costs of advertising are reflected in the products they purchase. Nevertheless, if programs once

financed by advertisers must in the future be paid for directly by viewers, there will be a measure of discontent, which makes the issue both emotionally and politically charged.

Television broadcasters have already sounded the alarm in the press and in the Congress, arguing that program siphoning by "pay cable" will exacerbate the audience fractionation that they expect cable's abundance of channels to produce even without such programming. They maintain that cable's competition for the viewing audience will diminish the total advertising revenues now flowing to broadcast television and sharply reduce the profitability of their business. They claim that their profits are used to underwrite news and public affairs programs and to produce costly, high-quality entertainment programs, all of which would be sharply cut back in response to cable's competition for programs and audience.

This line of argument assumes that news and public affairs programs, as well as high-quality entertainment programs, cannot be self-sustaining through advertiser support or a combination of advertiser and subscriber support. This assumption is questionable. There is no doubt that the networks and individual television stations perform a valuable public service in their information programs. If it is true that no other entity is capable of matching the broadcast networks' scale of national and international news coverage, there will continue to be advertiser and subscriber dollars available to support the networks' news and documentaries. At the same time, cable's abundance of channels and lower programming costs appear likely to lead to the emergence of additional news and public affairs programmers offering specialized or in-depth analysis to supplement the general coverage.

More generally, there can be a mixed system of advertiser and subscriber support for television programs; the two means of support can coexist in the electronic media as they do in newspapers, magazines, and other print media.

We anticipate that the broadcast media will continue to find advertisers who wish to reach the largest possible audience and are willing to continue support of the present kinds of mass-appeal programming. At the same time, some national and local advertisers also will be attracted to the relatively smaller audiences that could be reached by sponsoring programs that appeal directly to those audiences. Cable would thus provide a wider choice of advertiser-supported programs than now exists. Moreover, other advertisers, who wish to reach audiences with special interests but cannot afford the high cost of broadcasting's limited advertising time, can be expected to underwrite "free" programs on cable.

By definition, most of the time most of the viewers will be watching general-appeal entertainment programs. This type of programming

will continue to attract sufficient advertiser support, and people will pay only to see those programs that do not attract such support. Therefore, it is likely that most of the cable channels used for subscriber-supported programming will be devoted to special interest programs not available on advertiser-supported broadcast or cable channels or to repeating mass appeal programs at off-hours. This conclusion is important, not only for its implications of expanded consumer choice, but also for its promise of additional sources of revenue for the performing arts, public and private education, and for the television program production industry.

If the performing arts are to remain a vital part of our national life, they must be able to tap substantial new sources of funding. The expanded electronic box-office provided by subscriber-supported cable could be a major source of assistance. Public and private educational institutions could also derive additional revenues by offering vocational education, continuing and specialized education, and university extension courses over cable systems. Furthermore, the television program and motion picture production industries could be revitalized by subscriber-supported cable.

However, there may be a need to preclude the possibility that one type of mass audience appeal programming might shift to pay television. If there were no restraints, some popular professional sports programs might be "siphoned" from advertiser-supported television. In view of the congressional exemption of the professional sports leagues from the antitrust laws and the recent legislation barring the "free" television blackout of sold-out home games, sports programming stands on a different footing from all other entertainment programming on advertiser-supported television. Given the unique nexus between such programs and congressional policies, the Committee recommends that the FCC continue to apply some anti-siphoning restrictions concerning professional sports programs, until the Congress determines that they are no longer appropriate.

However, there is no need in the long-run for such restrictions on other forms of entertainment programming. The anticipated competition and flexibility in cable programming will make unnecessary and inappropriate any sweeping Government restrictions on the public's right to purchase a wide variety of information and entertainment services and on the originators right to sell such services.

> **Recommendation 6:** ***The programming, information or other services provided over cable should not be subject to administrative regulation of content, nor should the prices of such services be regulated by any governmental authority.***

Administrative regulation of broadcast programs has been sanctioned by the Supreme Court on the grounds that it assists in

achievement of First Amendment goals under conditions of vertical integration and a scarcity of broadcast frequencies. But with no use of the public airwaves, with a large number of channels, and with implementation of the separations policy, there is no need to resort to governmentally-imposed approximations in the cable medium. Under such conditions, use of the Fairness Doctrine, the equal time rule, and other forms of program content control to regulate what the audience can or must see and hear would simply be an end in itself—an unconscionable choice for a free society.

The absence of administrative regulation of the content of cable communications, however, need not and should not remove local, state, and Federal sanctions on pornography, libel, criminal incitement, and the like. Indeed, the Committee believes that additional safeguards may be necessary. The Government can and should vary its regulation of the communications media according to their particular characteristics. Cable systems are analogous to the mails and broadcasting in that they serve the consumer in his home where, without adequate safeguards, children may have easy access to the material distributed over cable channels. But the postal laws appear to provide a better example than the broadcast laws of the type of additional safeguards that may be needed.

We recommend that the law provide safeguards to allow for selective control over reception of programs and other communications that are not desired by the recipient, thereby enabling the individual to enforce his own standards of obscenity or violence without the need for extensive prior restraint. Such safeguards could include sanctions against the distribution of certain material to cable customers who have indicated they do not wish to receive it and requirements that the nature of certain programs be clearly identified, so that the subscriber can decide whether to accept them.

Cable technology permits individual choice in filtering out undesired communications through scrambling codes, locked channels, and other devices. Once such protective mechanisms are in place, more latitude could be allowed in programs presented over the cable medium than over the broadcast medium.

In addition to precluding administrative regulation of program content on cable channels, the Committee recommends that there be no regulation by any governmental authority of the prices charged to subscribers for information, programming, and other services by channel users. As discussed above, provision of programming and information services should be a highly competitive activity. There should be no need for any governmental authority to regulate the prices of such services. Moreover, Government regulation of such prices inevitably would lead to regulation of program and information content, since rate regulation would ultimately have a bearing on the

nature, quantity, and quality of the services being sold. For similar reasons there should be no requirements that certain programs or information services be provided free of charge by channel users or cable operators.

Recommendation 7: ***Incentives to create programming for cable should be fostered by full applicability of the copyright laws to cable channel users.***

There will be a steady supply of programming for presentation on cable channels only if there is a full range of financial incentives for the creators of programs. Both equity and the incentives necessary for the free and competitive supply of programs require a system in which program retailers using cable channels negotiate and pay for the right to use programs and other copyrighted information. Individual or industry-wide negotiations for a license, or right, to use copyrighted material are the rule in all the other media and should be the rule in the cable industry.

As a matter of communications policy, rather than copyright policy, the program retailer who distributes television broadcast signals in addition to those provided by the cable operator should be subject to full copyright liability for such retransmissions. However, given the reasonable expectations created by current regulatory policy, the cable operator should be entitled to a non-negotiated, blanket license, conferred by statute, to cover his own retransmission of broadcast signals (see note 2, pages 29–30 of this Chapter).

Institutional and Jurisdictional Framework for Cable Regulation

The preceding recommendations have dealt with the structure of the cable distribution and programming industries. This section sets forth the Committee's proposals for the requisite federal-state-local governmental relationships regarding cable regulation.

Since the general thrust of the Committee's recommendations involves far less detailed administrative regulation than has existed in broadcasting, we considered carefully the question of why cable systems have to be regulated at all. There are three reasons usually given: (1) a cable system is a natural monopoly in its service area, and as such, should be regulated to preclude abuses that competition would normally prevent; (2) virtually all cable systems are integral parts of the interstate distribution of programming and other information services, and some regulation of the distribution medium is necessary to assure system compatibility and interoperability; and (3) since cable systems compete with broadcast stations and could compete for

some services with telephone companies, there should be parity of regulation among the competitors.

The third reason relies on a distorted notion of equity, which would justify pervasive and detailed regulation of cable simply for the benefit of cable's competitors. The first two reasons are valid, but they justify only a limited degree of regulation, quite different from the type that is usually considered in the telecommunications field.

Cable is an integral part of the interstate movement of electronic communications, and this relationship to interstate commerce provides adequate legal authority for the Federal Government to establish uniform conditions or minimum standards to which non-Federal action must conform.

However, the existence of Federal authority does not resolve the question of how to determine the most effective combination of national and local regulation. Federal authority could conceivably occupy the entire field, but this would be an unwise course, even if the Federal Government were somehow able to cope with the administrative burden of regulating thousands of cable systems across the country. State and local governments have an important interest in the construction and operation of cable systems, and they can best provide regulation responsive to local needs. Consequently, the Committee has concluded—as has virtually every other body that has grappled with this issue—that there must be a carefully structured dualism of governmental oversight.

> **Recommendation 8:** ***The Federal Government's authority over cable should be exercised initially to implement a national policy; thereafter, detailed Federal administrative supervision should be limited to setting certain technical standards for cable and applying anti-siphoning restrictions on professional sports programming.***

The policy we recommend calls for use of Federal authority over cable solely as a means of achieving the national policy goals that we have identified. But Federal authority need not and should not intrude into all aspects of cable operations, as has happened in other fields of Federal regulation.

The Federal Government would exercise jurisdiction only over those aspects of cable operations that require uniform national treatment. The most important policies in this regard are the separations policy; the prohibitions on rate of return regulation of cable operators and on rate regulation of channel users; the anti-siphoning restrictions on pay cable presentations of professional sports programming; certain privacy safeguards; copyright liability; and other policies concerning industry structure in the cable distribution and programming fields.

Most of these policies do not require the day-to-day supervision of a Federal regulatory agency, but rather the uniform and consistent treatment that generally can be derived from enforcement in the Federal courts. For example, the Department of Justice and private parties could seek enforcement of those aspects of the policy that depend on the antitrust laws for their implementation (such as prevention of abusive cross-media and multiple-system ownership, anticompetitive joint use of interconnection facilities and cable systems, etc.), and those that involve constitutionally and legislatively protected rights (such as free speech, nondiscriminatory access to channels, and privacy).

The only aspects of cable regulation that appear to require continuing supervision by a Federal agency are enforcement of technical transmission or distribution standards and the sports anti-siphoning restrictions. The mandatory technical standards, however, should be limited strictly to those that are necessary to make cable systems interoperable and compatible with the equipment required to transmit and receive cable signals, as well as those necessary to protect individual privacy in cable communications (see page 38). The Committee recommends that the function of establishing and enforcing technical standards be performed by the FCC, but this function should not be used as justification for cable licensing, rate regultaion, or other control over industry operations or practices.[7]

Recommendation 9: *Franchising authorities should have the principal responsibility for the regulation of cable systems.*

At present, overlapping local, state, and Federal jurisdiction over cable has led to the consideration or imposition of inappropriate forms of regulation. The FCC has dealt with some of these jurisdictional problems, but the comprehensive resolution of all of them will best be achieved through early enactment of Federal legislation to assure that non-Federal regulation is compatible with the overall national policy for cable. Federal legislation should establish the jurisdictional framework, but as a general rule, the non-Federal franchising authority should have the prinicipal responsibility for regulation of cable systems. Use of the franchising process to exercise reasonable oversight of cable will avoid the continuing burden and bottlenecks of day-to-day supervision of system operations that could result from Federal or non-Federal regulation of cable by an administrative agency.

At present, the cable franchising function is performed by municipalities and other local governments. The Committee believes that the

[7] We also recognize the responsibility of the FCC to set standards for spurious radiation from electronic equipment. However, these standards are not unique to cable.

529-214 O - 74 - 4

local levels of government should continue to exercise this vital function, since they are the authorities most closely attuned to local conditions and needs affecting cable system construction and operation. But it would not be appropriate for the Federal Government to assign responsibilities for governmental supervision of cable directly to municipalities. The decision regarding whether states or localities will perform franchising functions must be left to the states, although we strongly urge that the local governments retain such authority and functions.

This is not to say, however, that there should be no role for the states. The state governments are in the best position to assure that cable systems provide substantial public benefits and do not abuse their natural monopoly positions. States could provide overall guidance and assistance to local authorities in their franchising activities, and establish minimum requirements regarding safety of cable system construction and operation. If ultimately required, states could also oversee the reasonableness of customer connection charges and of channel leasing rates imposed by the cable operator and could assure that cable systems and telephone companies compete fairly with each other and with other companies.

Within the regulatory structure we recommend, the franchising authorities would be subject to certain uniform conditions, standards, and guidelines intended to implement the national policy objectives for cable. The most important prohibitions and requirements to which state and local action must conform in order to achieve these objectives are as follows:

a. *Prohibition on public utility-type rate-of-return regulation.*

Rate-of-return regulation of the rates which cable operators charge channel users should not be imposed by any level of government unless there is a clearly defined need for it.[8] The need for such regulation may never arise, since the power of the operator to charge excessive rates for channel leasing would be held in check by the presence of competition from broadcast stations, telephone companies, or new technologies. More importantly, under the policy we have proposed, the cable operator would profit most in the long run by encouraging wider and more extensive use of his cable capacity. This should bring about an industry pattern of expanding cable capacity and facilities and lowering rates to stimulate increased usage. In any event, if cable operators were to evidence a pattern of limiting capacity and charging high rates, public utility regulation could then be imposed by the states. Such regulation would necessarily include both rate-of-return regulation and a requirement that the system add channel capacity

[8] All regulation of rates and charges set by channel users for the provision of programming and other information services to their subscribers will, of course, be precluded.

upon reasonable demand. As with rate-of-return regulation, the expansion of capacity requirement should not be imposed until there is a clearly defined need for it.

b. *Prohibition on grants of exclusive franchises.*

There should be a prohibition on the grant of exclusive franchises for cable systems. While cable systems will be local monopolies because of techinical and economic factors, there is no reason to erect legal barriers to competitive communications systems that may develop in the future or to other cable companies that could provide better service to the public than the cable system franchised initially. Even the possibility that the franchising authority might issue another franchise for the same area could act as a check upon the cable operator who was initially franchised.

c. *Prohibition on use of franchise fees as general revenue raising devices.*

Local authorities should not use the cable franchise as a means of raising general revenues, since revenue-raising franchise fees could dilute or remove the cable operators' incentives to expand services. Franchise fees, however, could be used to compensate the franchising authority for the costs of issuing and administering the franchise and for costs associated with the use of public rights-of-way. Moreover, the prohibition on revenue-raising franchise fees would not preclude local governments from imposing reasonable business taxes on the cable operator.

d. *Prohibition on dedicated free channels.*

Franchising authorities should be prohibited from requiring the dedication of special channels for governmental, instructional, and other special purposes. At present, FCC rules require that cable operators reserve one channel for educational use and one channel for local government use, and that these channels be made available without charge. Such specially designated and reserved channels served a purpose in the limited-channel, vertically-integrated environment of broadcast television. Such requirements are unnecessary in a cable industry operating under the separations principle, since educational and local governmental entities, along with everyone else, will have unfettered access to the cable system's channels. Moreover, such requirements inevitably invite franchising authorities to make value judgments and set priorities regarding the terms and conditions of using free channels. The interest of governmental, non-commercial, and nonprofit entities in low cost access to cable channels will be

served adequately through the operation of the variable charge, leased-channel rate schedule discussed below.[9]

e. *Requirement of adequate channel capacity.*

To assure ample channel capacity for a variety of programming and other informaiton services, the franchise should specify the number of channels that is considered to be adequate as a basic level of cable system capacity. The FCC presently requires that systems in the top 100 television markets be constructed with a minimum of 20 channels. Franchising authorities would be authorized to require channel capacity in excess of this minimum by negotiations with the prospective cable operator when the franchise is to be issued initially or reissued.

f. *Requirement of non-discriminatory channel lease rates.*

The franchise should require that the rates charged channel users by the system operator do not unreasonably discriminate among comparable channel uses and users. Disputes regarding the schedule of rates would be resolved by the courts, rather than the franchising authority.

There may be different rates charged for various times of the day, discounts for long-term or volume leasing of channel time or capacity, as well as different rates for various uses of the cable channels. For example, the highest unit rate for commercial use might be a percentage of the channel user's gross revenues received from subscriber-supported presentations of feature films, with flat rates charged for advertiser-supported programs; different rates could be used for utility company meter reading services or banking services.

The cable operator could also establish various pricing mechanisms for particular channel users. Channel users could be charged on the basis of each home subscribing to the particular program rather than charged a flat rate based upon the total number of homes connected to the cable system. In this way, special interest, public service, or instructional programmers could benefit from the economic base provided to the cable operator from channel users offering mass appeal programming.

In short, there are many ways that the cable operator could participate in the profitability of the programs offered by certain types of

---

[9] We note, however, the growing interest in public access, in which a cable channel is used as a "soap-box" to allow members of the general public to participate in a community dialogue. We believe that such a cable channel can serve important goals of free expression. It would not be inconsistent with the policy stated above to maintain the present FCC requirement that the cable operator provide the use of one channel without charge for such public access purposes, as long as this requirement is imposed and administered by the franchising authority. However, we recommend against earmarking a portion of the cable franchise fee to subsidize the use of the public access channel, since other public and private funds can be used for this purpose.

channel users, without undercutting the objectives of the separations policy. Furthermore, this would make possible lower rates for local governmental, educational, charitable, and other nonprofit organizations and civic groups.

g. Miscellaneous franchise provisions.

The jurisdictional framework for cable recommended by the Committee would allow franchising authorities to establish conditions dealing with the cable system operator's qualifications, construction timetables, extension of service to all portions of the franchise area, setting maximum limits on the rates charged by the system operator for cable installation and monthly service, handling of service complaints, and establishing other conditions not expressly prohibited by Federal policy.

The Consumer and the Cable

In one sense, a separate discussion of relationships between consumers and cable systems should not be necessary. The policy direction we have chosen is intended to remove technological, economic, and legal barriers to the flow of information between the public and those who wish to provide programs or other information services. Theoretically, once the absence of those barriers is assured there should be no further need for Government to intrude upon relationships between the cable operators and channel users, or between channel users and subscribers. In practice, there are bound to be problems which will require some affirmative governmental effort to deal with them.

The Committee, therefore, recommends that steps be taken to prevent the invasion of individual privacy that could otherwise arise in some uses of cable. Additional action may also be needed to assure that basic cable or other broadband communications facilities are available to residents of outlying rural areas or to the poor. However, some of these actions will not be necessary for many years, until problems arise; or may not be needed at all, if no problems arise.

> **Recommendation 10:** ***There should be strong legal and technical safeguards to protect individual privacy in cable communications.***

There has been justifiable concern over the possible invasions of privacy posed by the development of cable. For example, remote monitoring services, such as automatic meter reading, may be used by unautheorized persons for clandestine surveillance. Unauthorized persons could also misuse confidential, personal information conveyed by cable to data storage or processing centers. Furthermore, commercial enterprises, and perhaps local governments, would be able to keep

track of every program a person watches or any information service he or she uses. This could cause a substantial "chilling" effect on the flow of information as well as a serious erosion of privacy. New technology could also make it possible to address selectively each cable subscriber and provide the means to inundate him with unwanted information.

The Committee considers the individual's ability to safeguard his personal privacy to be one of the most important goals of a free society. The law and the traditions of a society based on the initiative, responsibility and privacy of the individual require that technology serve, not erode, this goal.

Therefore, we recommend the adoption of legal safeguards to allow individual control over undesired communications and intrusions into the home. These safeguards could include sanctions against the distribution of material which the subscriber indicated he does not wish to receive or which he has not specifically requested. In addition to these safeguards, the constitutional and "common" law of privacy would also apply to cable and should be adapted and enforced by the courts. Finally, cable lends itself to use of technical safeguards, such as scrambling codes and locked channels. The FCC, in conjunction with other Government agencies, should develop and implement technical standards and requirements necessary to afford added protection of privacy in cable communications.

Recommendation 11: ***Governmental authorities should assure that basic cable or other broadband communications are available to residents of rural areas and to the poor.***

Even though a majority of the homes in the United States may be wired for cable and cable may be providing programming and other information services in addition to retransmission of broadcast signals, many residents of outlying rural areas may not have the option of subscribing to cable. While it may eventually become economical for cable operators to extend facilities to these areas, this may be an instance in which sole reliance on the free market incentives of cable operators may not be adequate to meet certain national policy objectives, such as the widespread availability of information.

If this becomes a significant problem in the future, the Government should take affirmative action to assure a basic level of broadband communications service for residents of outlying rural areas. We recommend that the Secretary of Housing and Urban Development and the Secretary of Agriculture be directed to follow the development of cable in rural areas and make recommendations for such Government action as they deem appropriate.

There has also been concern expressed regarding the availability of cable to the poor in urban and rural areas. Cable operators may attempt to delay or refuse to offer their service to areas where there is a high proportion of poor households. To meet this difficulty, franchising authorities should require extension of service to all portions of the franchise areas. While this may be viewed by some as a subsidy of the poor by the rich, it is not a subsidy that is unusual or very burdensome, and it could avoid the emergence of a class of citizens cut off from what could well become the information mainstream of the future. Furthermore, many governmental services directed to the poor may be provided inexpensively and most effectively by cable. Vocational training, adult education, pre-school instruction, and public health information are examples of services that might be provided over cable with state or, in some instances, Federal funding. We recommend that the Secretary of Health, Education and Welfare be directed to examine the feasibility and cost of using cable to assist in the delivery of such services, to make such information available to the state and local governments, and to include use of cable channel capacity in federally funded programs when appropriate (see Chapter V).

Recommendation 12: ***Participation by minority groups in cable system ownership, operation and programming should be facilitated.***

The development of cable represents a unique opportunity for minority, racial, and ethnic groups to become actively involved in a new communications medium. Minority groups not only should have employment opportunities, but also full opportunity to participate in all aspects of cable ownership, operation, and programming.

The general policy for the structure and regulation of the cable industry that we recommend would facilitate participation by all segments of society in cable ownership or control of channel use. Moreover, the local franchising authority should ensure opportunities for minority ownership and control in cable systems and programming.

At the Federal level, the Equal Employment Opportunity Commission should devote special attention to the development of the cable industry to assure ample employment opportunities for minority group members. We also recommend that the Office of Minority Business Enterprise and the Small Business Administration of the Department of Commerce be directed to give high priority to cable and to propose any necessary special provisions, such as loan guarantees, to foster significant minority ownership or control of cable operations.

CHAPTER IV

A TRANSITION PERIOD

"The almost explosive development of CATV suggests the need of a comprehensive reexamination of the statutory scheme as it relates to this new development, so that the basic policies are considered by Congress and not left entirely to the Commission and the courts."

—Chief Justice Warren E. Burger

CHAPTER IV

A TRANSITION PERIOD

THE POLICY RECOMMENDATIONS in Chapter III are designed to deal with a developed cable industry. Such a nationwide cable medium, used for a wide variety of information and entertainment services, will be far different from the cable industry today, which is oriented primarily to the retransmission of broadcast television signals and is a relatively small part of the nation's communications media.

The next decade of cable's growth will require large quantities of long-term capital to finance construction of distribution facilities and more speculative risk capital to finance programming and other service ventures. Without the opportunity for adequate financial rewards, entrepreneurs will lack the necessary incentives either to construct systems in major cities, or to develop a wide range of services that use cable channels.

The Committee is aware that there are those in the cable industry and the financial community who fear that cable will not grow at all unless the cable operator is allowed to program his own channels in order to attract subscribers and maintain an adequate short-run cash flow. This concern rests on the questionable assumption that no one but the cable operator has sufficient incentives to develop the new programming that will be needed to attract subscribers in major cities. However unwarranted these fears may be, the immediate adoption of the separations policy could prompt many potential investors to avoid the cable industry, causing cable to fall prey to a self-fulfilling prophecy of failure.

Nonetheless, the Committee believes this is the proper time to agree upon a broad long-range public policy for cable communications which reflects agreement upon the core principle of separating the control of the cable distribution medium from control of the programs or other information distributed by cable. Such consensus is needed in order to indicate the framework in which the cable industry is to operate and to diminish the uncertainty that has troubled cable entrepreneurs, investors, regulators, and customers during the past decade.

However, in order to facilitate the orderly development of the cable industry, the Committee recommends a transition period during which there would be a phased, evolutionary implementation and applica-

tion of the new cable policy by the Federal, state, and local levels of government. Taking such an approach, cable development in accord with the new policy need not await congressional action. Although some of the Committee's policy recommendations would best be implemented by enactment of legislation in the immediate future, there is much that the Executive Branch, the FCC, states, municipalities, and private groups can do to implement the Committee's policy recommendations during the transition period.

Duration of the Transition Period

Specifying in advance the duration of the transition period on the basis of some measurement of the cable industry's maturity is a somewhat arbitrary but still necessary task. The Committee considered many possibilities, of which the two most likely were to:

(1) end the transition period at some predetermined future date, such as ten years after the initial aspects of the long-run policy are adopted; or

(2) end the transition period upon attainment of some objective criterion of "maturity;" such as the connection of some specific percentage of households to cable, either natitonwide or in each franchise area.

There are several variations and combinations of these possibilities, and each has its strengths and weaknesses. Almost any approach that would end the transition at the same time nationwide could rather arbitrarily work hardships for particular cable operators or communities. Conversely, if the end of the transition period were based on homes connected to cable on a system-by-system basis, some cable operators might have an incentive to delay reaching the critical percentage and to forestall the separations policy through such tactics as charging excessive rates. This would be less of a problem if the overall nationwide percentage of homes connected were used to measure the maturity of the cable industry.

On balance, the Committee believes that the most appropriate criterion to mark the end of the transition period is the point when the nationwide percentage of households connected to cable systems reaches about 50 percent. As discussed below, however, the various franchising authorities should establish procedures for gradually loosening the operator's channel control in a manner most appropriate for each community, prior to achievement of the 50 percent level nationwide. In this way, there would be ample local control over the rate at which each cable system became subject to the separations policy. Moreover, a viable national cable program supply industry could evolve in an orderly manner over the course of the transition period, rather than having to spring into existence full-blown at its end.

Transition Period Provisions

In cable's early years, the potentially adverse effects of its natural monoply characteristics will be minimal. Therefore, the primary purpose of the transition period is to postpone the full application of the separations policy, and the other long-range policy recommendations that flow from it, until the cable industry approaches maturity, when such policies will be both necessary and appropriate.

Accordingly, during the transition period, cable operators should be permitted to offer programming directly or to have financial or other interests in the programming and other services offered over their systems. At the end of the transition for the particular system, the cable operator would be required to certify to the franchising authority that the sales, trades, and other divestiture arrangements have been made to assure full compliance with the separations policy.

Before the full separations principle is in effect, cable operators may have economic incentives to limit channel capacity in order to enhance the value of the channels under their control. Therefore, to assure from the outset a reasonable number of channels available for lease to others, franchising authorities should be required by Federal policy to specify that cable systems make available for lease one equivalent channel for each channel used by the cable operator for program originations and for retransmission of broadcast signals. Moreover, the franchising authority should establish a pattern of gradual lessening of the cable operator's control of channels by increasing the proportion of channels to be leased to others over the course of the transition period.

Without the protection of the separations policy, the dangers inherent in allowing cross-media ownership (newspaper, magazines, broadcast stations) of cable systems will have to be dealt with in some other fashion. Therefore, certain types of cross-media ownership of cable systems should be prohibited until the end of the transition. The FCC's present cable rules prohibit the television broadcast networks from owning cable systems and preclude television broadcasters from owning such systems in their stations' service areas. These rules should remain in effect during the transition period, but there should be no divestiture required for existing cross-media ownership combinations. No other cross-ownership rules should be adopted.

The Committee also recommends against imposing multiple system ownership restrictions by the FCC during the transition. The dangers of excessive multiple ownership can be adequately controlled through application of the antitrust laws, tempered by the usual "infant industry" antitrust enforcement practices that have been found to be in the public interest.

Finally, during the transition period, there should be some limita-

tions on the type of programming now available on advertiser-supported television that could be offered for a fee on cable systems. The FCC's present "anti-siphoning" rules are intended to preserve a basic level of advertiser-supported sports and entertainment programs on over-the-air television. While a mixed system of subscriber-support and advertiser-support for programs will provide the greatest choice and diversity for consumers and should not be restricted by Government in the long run (see Chapter III, Recommendation 5), we recognize that some aspects of this policy are not appropriate for the transition period. For example, if some popular programs were "siphoned" from advertiser-supported TV while relatively few households were connected to cable, some viewers might be deprived of a program on broadcast television before they had access to it on a cable channel.

As discussed above, many provisions of the transition period will end for some cable systems prior to the time when the number of homes connected to cable reaches 50 percent nationwide, if the franchising authorities so determine. However, siphoning is a national concern and removal of restrictions should not be left to the discretion of franchising authorities. Therefore, we recommend that some restrictions on siphoning be administered by the FCC for the full transition period, and be made applicable against whomever is providing subscriber-supported programming during that period, whether it is the cable operator or a channel programmer not affiliated with the cable operator. However, the FCC's current "anti-siphoning" rules are quite complex. We do not endorse these particular rules, but we recommend that the FCC have the authority to adapt reasonable anti-siphoning provisions to the changing conditions in the broadcast, cable, and programming industries, selectively lessening the restrictiveness of the rules.

At the end of the transition period, there should be no siphoning restrictions except those applying to the "pay" presentation of professional sports events. As noted in Chapter III, the Committee feels that the Congress should determine the most appropriate time to lift such restrictions on professional sports programs, given the close relationship between such programs and congressional policies regarding the antitrust exemption for sports leagues and the "blacking-out" of sold-out home games.

There should be no additional administrative controls on program content on cable channels. Thus, the equal time provisions of the Communications Act, the Fairness Doctrine, and public service program requirements should not apply to programming originated on cable during the transition period or in the long run. It is essential that, from the outset, the use of the cable medium for distributing programs be free from administrative regulation of content.

Evolutionary Implementation

The Committee believes that the long-range and transitional policies we recommend should evolve in a number of steps along two broad fronts: division of regulatory authority and adoption of long-range policy. While we strongly believe that the Congress should establish the principles of the new cable policy, virtually all of the steps described below could be taken by the FCC, either independently or in conjunction with franchising authorities, if the Congress fails to act.

a. *Division of regulatory authority*

The first step in the evolutionary plan, which should be taken immediately, is to divide regulatory authority over cable between the Federal and non-Federal levels, as discussed in Chapter III, Recommendations 8 and 9.

The FCC would keep in effect its present cable rules, except for removal of the requirements regarding: (1) mandatory program originations; (2) application of the Fairness Doctrine, equal time provisions, and similar kinds of program content requirements to cable program originations; (3) reservation of a public access channel, which would be left to franchise requirements; (4) specification of a basic level of channel capacity to be leased to others, which would also be left to franchise requirements; (5) designation of educational and local government channels; (6) expansion of channel capacity; and (7) specification of two-way channel capacity. Existing cross-media ownership of cable would be allowed to continue, but the FCC would maintain rules forbidding prospective cable system ownership by television broadcast stations in their own markets and by television networks nationwide.

The FCC would also be prohibited from adopting multiple system ownership rules for cable and from imposing rate-of-return regulation on cable operators or any form of rate regulation on channel users. The common ownership or control of cable systems, interconnection facilities, and program supply services would be prohibited (Recommendation 2), as would the ownership of cable systems by telephone common carriers in their service areas (Recommendation 4). The FCC would adapt its present "anti-siphoning" restrictions on cable programming to reflect changing conditions in the broadcast, cable, and programming industries.

With respect to the franchising authorities, Recommendation 9 would be fully implemented. Thus, there would be prohibitions on rate-of-return regulation of cable operators; on rate or program regulation of channel users; on granting exclusive franchises; on use of franchise fees to raise general revenues; and on requirements for special-use, dedicated channels or free service. There would also be

franchise requirements that lease rate schedules do not unreasonably discriminate among comparable channel uses or users, that system operators have adequate channel capacity, that system operators make available for lease to others at least one equivalent channel for every channel used by the operator for retransmission of broadcast signals or for program originations, and that one channel be made available for public access purposes. Furthermore, franchising authorities would have specific authority to control the rate of progress to full application of the separations policy by increasing the proportion of channels to be leased to others.

The Committee believes that prompt action by the Congress to divide regulatory authority over cable is especially desirable. The necessary consensus on a national cable policy could be reflected in a preamble to such legislation. While the preamble would not have the force of law, it would establish the separations principle as the goal for subsequent regulatory and legislative action by all levels of government. This would give the industry, the public, and governmental authorities a clear indication of where cable is headed and what the industry structure and government regulation is likely to be. This would facilitate planning by the cable industry and the investment community and greatly ease the subsequent evolution to a full separations policy.

b. *Adoption of long-range policy*

Implementation of the balance of the Committee's long-range policy recommendations and termination of the special transition provisions require the following actions effective at the end of the transition period:

1. Limitation of FCC authority to enforcement of technical standards and of restrictions on charging viewers for professional sports programs.

2. Removal of restrictions on joint ownership of television stations and cable systems in the same market and on television broadcast network ownership of cable systems.

3. Adoption of appropriate privacy safeguards.

4. Implementation of special provisions regarding availability of cable services to residents of rural areas and to the poor.

5. Requiring cable operators to divest themselves of activities not in compliance with the separations policy.

Ideally, these provisions would be enacted by the Congress to become effective at the end of the transition period. However, certain provisions, such as those regarding privacy and residents of rural areas and the poor, might become effective before the end of the transition period. If the Congress failed to act before the end of the transition period, the FCC, other Government agencies, and the franchising authorities could still implement most of the long-range policy provisions.

CHAPTER V

A DEMONSTRATION PROGRAM

"We have proposed a Federally supported program to demonstrate innovative public service uses of cable technology and to identify more precisely the technical and legal safeguards necessary to protect personal privacy in the use of cable."

539-214 O - 74 - 5

CHAPTER V

A DEMONSTRATION PROGRAM

The committee's basic concerns about the free flow of information led us to recommend a regulatory framework in which Government is neutral with respect to the nature and content of the messages distributed over the cable. Thus, the Government would not have regulatory mechanisms to require public interest uses of cable as it does in broadcasting. At the same time, the Committee recognized the potential of using cable for public services that traditionally are promoted or provided by Government agencies. We feel there is a need for the Government to make sure that this potential is fully explored and realized. We are concerned that relying solely on the commercial marketplace for the development of cable services may cause commercial applications to outstrip the development of public services. Unless cable's use for public services is thoroughly explored and developed early in cable's growth, the introduction of such services may be greatly delayed or thwarted.

Moreover, the Committee is convinced that legal and technical safeguards needed to protect individual privacy must be developed and evaluated before cable growth is so extensive and cable facilities and practices are so firmly entrenched that the appropriate safeguards cannot be adopted without major opposition, disruption, and expense.

Finally, there is a chicken and egg problem hampering the development of many valuable services that might be commercially viable. The demand for these services depends heavily on their availability, yet few potential suppliers are willing to accept the risk of developing new services without significant evidence of a market demand for them. Similarly, while each new cable service would require relatively expensive special facilities if offered alone, these services can be aggregated and the requisite facilities can be combined so that these costs can be shared, but no one has emerged to lead and coordinate such a joint effort.

The Committee believes the Federal Government has a responsibility to help identify the public services that can best be provided via cable communications and to evaluate appropriate privacy safeguards. The Committee has concluded that the most effective way to achieve these objectives would be through a federally supported effort. Consequently, we recommend consideration of a systematic demonstra-

tion program involving Federal, state, and local government agencies, appropriate public and professional groups, and the cable and electronics manufacturing industries. The experience gained from this program would reduce the lead time needed to develop many desirable public service uses of cable and facilitate their widespread implementation with greater effectiveness and efficiency. The demonstration program would also make it possible for private users to test the feasibility of various new services at their own expense, offsetting some of the cost of testing public service applications.

Description of the Proposed Demonstration Program

Although the Committee did not attempt to establish the precise characteristics of the demonstration program, it did consider the program's basic structure and overall objectives.

It is important that the demonstration program be carefully delimited in both geographic scope and duration in order to assure that the program does not constitute a widespread or continuing subsidy for the cable industry or a vehicle for government propagandizing over cable.

Governmental funds should be used only to support the purchase of advanced terminal equipment and to underwrite certain of the costs of the public service aspects of the demonstration. We expect that much of the system equipment and facilities, including the cable distribution system needed for the demonstration program, would be financed by the private sector or would consist of existing systems in a number of representative communities.

Participants in the program should include the Department of Health, Education and Welfare; the Department of Housing and Urban Development; the Environmental Protection Agency; and other Federal agencies which provide direct service to the public. State and local governments should be involved in the selection of demonstration services and sites, as well as in operational aspects of the program. And both private and public institutions should share in designing and providing services and in conducting related experiments.

Federal support for the program should run for no more than five years, with actual on-site demonstrations beginning as early as the second year. Systematic evaluation plans should be incorporated into each of the experimental efforts so that information will be available to guide the development of other experiments. All public and private institutions that participate in the demonstration program, including those who do so at their own expense by paying projected commercial rates for channel leasing and facilities, should be obliged

to agree that all evaluation and experimental data will be made available to the public.

Some examples of types of service that have been suggested to the Committee as appropriate for the demonstration program are:

- Adult education courses and university extension instruction could be provided to individuals in their homes at times most convenient to them and in a manner tailored their particular needs. These could include cable distribution of high school equivalency programs, vocational training, and college course work offered in conjunction with particular colleges and universities.
- A broad range of medical and public health information and services could be delivered to people in their homes, and channels could be used to enhance the professional training of doctors and paramedical personnel.
- State and local agencies could use the demonstration program to develop improved services for the collection, storage, and retrieval of a wide variety of local government information, including office hours, where-to-go for various services, and municipal code enforcement.
- Similarly, environmental agencies could experiment with cable in improving the effectiveness of their activities, including the monitoring, control and enforcement of air pollution standards, pollution health warnings for people with special sensitivities, and similar activities.
- Various businesses may wish to use facilities to test the feasibility of offering such services as use of the cable subscriber's home terminal to select and order goods from department store catalogues; to order tickets for transportation, entertainment, and cultural events; for home use of computer processing networks; for banking transactions; for files and record maintenance; and for electronic mail delivery.

529-214 O - 74 - 6

CHAPTER VI

SUMMARY OUTLINE OF RECOMMENDATIONS

"The Committee has concluded that programming, advertising, and other information and services on cable channels can be allowed to develop on a free and competitive basis, with no more regulatory power exercised over the content of this communications medium than is exercised over the print or film media."

CHAPTER VI

SUMMARY OUTLINE OF RECOMMENDATIONS

The following sections A–E constitute a summary outline of the Committee's long-range recommendations (Chapter III) as they affect cable operators, channel users, telephone common carriers, the FCC, and the franchising authorities. The exceptions to those recommendations, which would apply during the transition period (Chapter IV), are summarized in section F.

A. Policies Affecting Cable System Operators

1. Operators should be **required** to:

a. Offer their channels, or time on their channels, for lease to others for any lawful purpose, and without discrimination among comparable uses and users (pp. 29–30, 44–45),[1] with the exception of the channels used for retransmission of the broadcast signals authorized for carriage by the FCC's cable rules, plus one or two additional channels. The FCC's rules regarding broadcast signal carriage will apply to channels used for retransmission of the broadcast signals (note 2, pp. 29–30).

b. Comply with Federal and franchising authority requirements to construct cable systems with adequate channel capacity (p. 44).

c. Comply with the minimum technical standards established for cable distribution by the FCC (p. 41).

d. Offer customers a selective means to control or prevent reception of programming or information services which the customer does not wish to receive, and to prevent interception of personal or confidential information distributed over cable (pp. 38, 41).

2. Operators should be **allowed** to:

a. Own and operate other media outlets such as newspapers, magazines, or broadcast stations or networks including those within the same market area as the cable system (p. 32).

3. Operators should be **prohibited** from:

a. Having any financial or ownership interest in, or any control of, the production, selection, financing or marketing of the program or information services supplied by channel users leasing the operators' distribution facilities (pp. 29–30); with the exception noted in section A.1.a.

[1] All page references are to Chapter III except where otherwise indicated.

b. Participating in the joint ownership or control of cable systems, interconnection facilities, and program supply services (p. 31).

B. Policies Affecting Program Retailers and Other Channel Users

1. Channel users should be **required** to:

a. Adhere to all applicable provisions of copyright laws and accept full liability for any program materials or information services they may supply (p. 39).

2. Channel users should be **allowed** to:

a. Lease channels or obtain other distribution services from any cable system with which they have no financial relationship or other form of common interest or control—with the exception noted in section A.1.a.—and offer to the public any lawful program materials or information services via such system (pp. 29–30, 37–39).

b. Establish such charges as they consider appropriate for the programming or information services they supply, without regulation by Federal, state, or local authorities (pp. 38–39).

c. Have legal recourse against any cable system operator: (1) who denies access or discriminates against the channel user by reason of the content of the user's message or the user's race, religion, nationality, or beliefs; or (2) who otherwise engages in practices that violate the requirement of non-discriminatory channel lease rates (p. 44).

3. Channel users should be **prohibited** from:

a. Providing any information or taking any action in violation of relevant laws and statutes protecting privacy and governing dissemination of obscene, libelous, or otherwise illegal material, as well as material the cable customer has indicated he does not wish to receive (p. 38).

b. Requiring viewers to pay a fee for professional sports programming unless consistent with the FCC's anti-siphoning restrictions (p. 37).

C. Policies Affecting Telephone Common Carriers

1. Common carriers should be **required** to:

a. Provide pole, conduit, or other right-of-way access to any franchised cable system operator at reasonable rates and without discrimination among users or uses (p. 34).

2. Common carriers should be **allowed** to:

a. Offer local cable distribution service on a "lease-back" basis to any franchised cable system operator (p. 34).

b. Obtain franchises to operate as cable system operators outside

of any area in which they have exclusive authority to provide telephone service (p. 34).

3. Common carriers should be **prohibited** from:

a. Owning, controlling or operating any cable system within their telephone service areas, i.e., performing any function not associated with actual signal distribution, such as the operation of cable system "head-ends" used for information origination, reception, conversion, switching, or other processing functions (p. 34).

D. Policies Affecting the Federal Communications Commission (FCC)

1. FCC shuld be **permitted** only to:

a. Establish minimum technical standards for cable distribution systems, only as needed to ensure compatibility, interoperability, privacy and security of cable systems (p. 41).

b. Require that cable systems be constructed with adequate channel capacity (p. 44).

c. Apply restrictions to the presentation for a fee of professional sports programs (pp. 37, 41).

2. FCC should **not be permitted** to:

a. Regulate in any way the information content of any services carried by cable systems including any regulations as to the balance or "fairness" of such information (p. 38).

b. Require minimum channel capacity to be leased to others; designate special purpose channels; require expansion of channel capacity or construction of two-way capacity (Chapter IV, pp. 9–10).

c. Regulate the rates or earnings of cable operators or channel users, or require any free service (pp. 38–39).

d. Limit, by regulation or policy, the ownership of cable systems by broadcast stations or networks, or by newspapers, magazines, or other media outlets, or limit the number of cable systems to be owned by one firm or the number of customers to be served by one firm (p. 32).

E. Policies Affecting Franchising Authorities

1. Franchising authorities should be **required** to:

a. Award non-exclusive franchises for the use of public rights-of-way by cable systems, and collect franchise fees for such use to the extent the fees merely compensate for the costs of regulation or costs incurred in the use of the public rights-of-way (p. 43).

b. Require that the rates, terms, and conditions, for channel leasing, not unreasonably discriminate among comparable channel uses and users (pp. 44–45).

c. Require that the cable operator make available one channel to be used for public access purposes (note 9, p. 44).

d. Require, through negotiations with prospective cable operators, that cable systems be constructed with adequate channel capacity (p. 44).

2. Franchising authorities should be **permitted** to:

a. Set maximum limits on the rates or charges imposed on customers for cable installation (p. 45).

b. Establish franchising conditions dealing with the cable system operator's qualifications; construction timetables; extension of service to all portions of the franchise area; handling of service complaints; and other conditions not expressly forbidden to franchising authorities (p. 45).

3. Franchising authorities should **not be permitted** to:

a. Regulate the information content of any service carried by a cable operator including any regulation as to the balance or "fairness" of such information (p. 38).

b. Award exclusive franchises for cable systems or require dedicated free channels for special purposes (pp. 43–44).

c. Impose franchise fees on cable systems, when the primary purpose is to raise revenues (p 43).

d. Regulate the rate of return or earnings of cable operators or the rates charged by program or information suppliers to their subscribers (pp. 42–43).

F. Transition Policies

The following exceptions to the long-range policy recommendations would apply during the transition period, which would end when 50 percent of the nation's households were connected to cable systems (p. 52).

1. Cable operators would be exempt from the prohibition on offering programming directly or having financial or other interests in the programming and other services offered over their systems (p. 53).

2. Franchising authorities would have to require cable operators to:

a. Make available for lease to others at least one equivalent channel for every channel used by the cable operator for retransmission of broadcast signals or for program originations (p. 53).

b. Establish a pattern of gradual lessening of the cable operator's control of channels by increasing the proportion of channels to be leased to others (p. 53).

3. The Federal Communications Commission would continue to:

a. Prohibit future ownership of cable systems by television broadcast networks and by television broadcast stations in their station service areas (p. 53).

b. Apply restrictions on the type of entertainment programming that can be offered to cable system customers for a fee and adapt such restrictions to changing conditions in the broadcast, cable, and programming industries (p. 54).

APPENDIX

CURRENT REGULATORY FRAMEWORK

APPENDIX

CURRENT REGULATORY FRAMEWORK [1]

At first the cable television industry was regulated only by local authorities, whose requirements were designed primarily to assure that cables were installed in a manner consistent with construction and safety codes. These requirements were similar to those applied to other users of city streets and rights-of-way.

In 1965, the FCC issued its *First Report and Order* on cable television in which it asserted jurisdiction over microwave-linked cable systems. The following year, the *Second Report and Order* broadened FCC jurisdiction to include all cable systems, whether or not microwave links were used. This jurisdiction was tested in the courts and affirmed by the Supreme Court in 1968.[2]

The *Second Report and Order* also imposed restrictions on bringing "distant" television signals [3] into the top 100 markets. This constraint resulted in a virtual freeze on cable development in the nation's major urban and suburban centers, since cable operators believed that they would be unable to attract customers without offering distant signals in areas that already had good local broadcast TV reception.

In 1972, the Commission issued its *Cable Television Report and Order*, together with comprehensive rules and regulations which are reprinted below, lifting some of the distant signal restrictions and imposing a number of other requirements for major market cable systems. Although the rules permit expansion of cable into major markets, they also contain restraints which are designed, in the view of the FCC, to limit the competitive threat to the existing broadcast industry and to stimulate the use of cable for non-broadcast services.

The rules require that each newly franchised cable system obtain a "Certificate of Compliance" from the FCC before it may begin to carry broadcast television signals. This permits the Commission to determine whether the local franchising process, the franchise agreement, and the design of the cable system are in compliance with FCC requirements. The certification process also permits the applicant as well as the franchising authority to request waivers of the FCC's requirements when sufficient justification can be demonstrated. This pro-

[1] Portions of this summary of cable regulation are reprinted from *The Uses of Cable Communications* with the permission of the Cable Television Information Center, The Urban Institute.

[2] United States v. Southwestern Cable Co., 392 U.S. 157 (1968).

[3] Distant television signals are those that originate too far away to be received by ordinary home antennas.

vides a degree of flexibility in structuring a franchise to meet each community's individual objectives.

A two-tier regulatory system exists today with the FCC regulating the *areas of:*

—Broadcast television and radio signal carriage
—Program exclusivity
—Channel capacity
—Cablecasting
—Operational procedures and requirements
—Minimum franchise requirements

At the same time, local authorities may regulate such items as:

—Selection of franchisee
—Subscriber rates
—Monitoring system's performance and compliance
—Operation of municipal channels

In addition, there appears to be a third tier of regulation developing at the state level. Although only a few states have enacted cable regulations so far, it seems likely that eventually almost all will exert some degree of authority.

In terms of the specific uses to which a cable system may be put, the current FCC rules establish minimum requirements and require capacity for development of new services. For new major market systems, the rules require the following "designated" services:

1. *Retransmission service:* Mandatory carriage of local broadcast television stations and permissible carriage of distant broadcast stations up to defined limits (usually one or two).

2. *Local origination service:* At least one channel, under the control of the cable operator, devoted to local, non-automated programming.

3. *Public access service:* One free channel for the use of the general public on a non-discriminatory, first-come, first-served basis.

4. *Educational access service:* One channel, free for at least five years, reserved for use by local educational authorities.

5. *Government access service:* One channel, free for at least five years, reserved for government uses.

6. *Leased access service:* A number of channels available for lease to others who wish to provide new "undesignated" services via the cable.

In addition, the FCC's rules require a 20 channel minimum capacity. At least one channel must be available for nonbroadcast use for each channel used to carry broadcast signals. Thus, if 12 broadcast signals are carried, the system must provide at least 24 channels.

With regard to two-way communication, the Commission has required only that the cable system be capable of eventually providing return "nonvoice" signals from the subscriber to the cable control center. No time schedule for implementing this capability, or for providing a wider range of two-way communication, is imposed.

RULES AND REGULATIONS

Part 76 | *Cable Television Service*

SEPTEMBER 1972

FEDERAL COMMUNICATIONS COMMISSION

Contents—Part 76

Subpart A—General

Sec.

76.1 Purpose.
76.3 Other pertinent rules.
76.5 Definitions.
76.7 Special relief.

Subpart B—Applications and Certificates of Compliance

76.11 Certificate of compliance required.
76.13 Filing of applications.
76.16 Who may sign applications.
76.18 Amendment of applications.
76.20 Dismissal of applications.
76.25 Public notice.
76.27 Objections to applications; related matters.

Subpart C—Federal-State/Local Regulatory Relationships

76.31 Franchise standards.

Subpart D—Carriage of Television Broadcast Signals

76.51 Major television markets.
76.53 Reference points.
76.54 Significantly viewed signals; method to be followed for special showings.
76.55 Manner of carriage.
76.57 Provisions for systems operating in communities located outside of all major and smaller television markets.
76.59 Provisions for smaller television markets.
76.61 Provisions for first 50 major television markets.
76.63 Provisions for second 50 major television markets.
76.65 Grandfathering provisions.

Subpart E—[Reserved]

Subpart F—Program Exclusivity

76.91 Stations entitled to network program exclusivity.

Sec.

76.93 Extent of protection.
76.95 Exceptions.
76.97 Waiver petitions.
76.99 Grandfathering.
76.151 Syndicated program exclusivity; extent of protection.
76.153 Persons entitled to exclusivity.
76.155 Notification.
76.157 Exclusivity contracts.
76.159 Grandfathering.

Subpart G—Cablecasting

76.201 Origination cablecasting in conjunction with carriage of broadcast signals.
76.205 Origination cablecasts by candidates for public office.
76.209 Fairness doctrine; personal attacks; political editorials.
76.213 Lotteries.
76.215 Obsenity.
76.217 Advertising.
76.221 Sponsorship identification.
76.225 Per-program or per-channel charges for reception of cablecasts.
76.251 Minimum channel capacity; access channels.

Subpart H—General Operating Requirements

76.301 Copies of rules.
76.305 Logging and recordkeeping requirements.
76.311 Equal employment opportunities.

Subpart I—Forms and Reports

76.401 Annual report of cable television systems.
76.405 Cable television annual financial report.
76.406 Computation of cable television annual fee.
76.409 Annual employment report.
76.411 Annual report of complaints.

529-214 O - 74 - 7

Subpart J—Diversification of Control

76.501 Cross-ownership.

Subpart K—Technical Standards

76.601 Performance tests.
76.605 Technical standards.
76.609 Measurements.
76.613 Interference from a cable television system.
76.617 Responsibility for receiver-generated interference.

AUTHORITY: The provisions of this Part 76 issued under secs. 2, 3, 4, 301, 303, 307, 308, 309, 48 Stat., as amended 1064, 1065, 1066, 1081, 1082, 1083, 1084, 1085; 47 U.S.C. 152, 153 154, 301, 303, 307, 308, 309.

Subpart A—General

§ 76.1 Purpose.

The rules and regulations set forth in this part provide for the certification of cable television systems and for their operation in conformity with standards for carriage of television broadcast signals, program exclusivity, cablecasting, access channels, and related matters.

§ 76.3 Other pertinent rules.

Other pertinent provisions of the Commission's rules and regulations relating to the Cable Television Service are included in the following parts of this chapter:

Part 0—Commission Organization.
Part 1—Practice and Procedure.
Part 21—Domestic Public Radio Services (Other Than Maritime Mobile).
Part 63—Extension of Lines and Discontinuance of Service by Carriers.
Part 64—Miscellaneous Rules Relating to Common Carriers.
Part 78—Cable Television Relay Service.
Part 91—Industrial Radio Services.

§ 76.5 Definitions.

(a) *Cable television system (or CATV system).* Any facility that, in whole or in part, receives directly, or indirectly over the air, and amplifies or otherwise modifies the signals transmitting programs broadcast by one or more television or radio stations and distributes such signals by wire or cable to subscribing members of the public who pay for such service, but such term shall not include (1) any such facility that serves fewer than 50 subscribers, or (2) any such facility that serves only the residents of one or more apartment dwellings under common ownership, control, or management, and commercial establishments located on the premises of such an apartment house.

NOTE: In general, each separate and distinct community or municipal entity (including unincorporated communities within unincorporated areas and single, discrete unincorporated areas) served by cable television facilities constitutes a separate cable television system, even if there is a single headend and identical ownership of facilities extending into several communities. See e.g., Telerama, Inc., 3 FCC 2d 585 (1966); Mission Cable TV, Inc., 4 FCC 2d 236 (1966).

(b) *Television station; television broadcast station.* Any television broadcast station operating on a channel regularly assigned to its community by § 73.606 of this chapter, and any television broadcast station licensed by a foreign government: *Provided, however,* That a television broadcast station licensed by a foreign government shall not be entitled to assert a claim to carriage or program exclusivity, pursuant to Subpart D or F of this part, but may otherwise be carried if consistent with the rules.

(c) *Television translator station.* A television broadcast translator station as defined in § 74.701 of this chapter.

(d) *Principal community contour.* The signal contour that a television station is required to place over its entire principal community by § 73.685(a) of this chapter.

(e) *Grade A and Grade B contours.* The field intensity contours defined in § 73.683(a) of this chapter.

(f) *Specified zone of a television broadcast station.* The area extending 35 air miles from the reference point in the community to which that station is licensed or authorized by the Commission. A list of reference points is contained in § 76.53. A television broadcast station that is authorized but not operating has a specified zone that terminates eighteen (18) months after the initial grant of its construction permit.

(g) *Major television market.* The specified zone of a commercial television station licensed to a community listed in § 76.51, or a combination of such specified zones where more than one community is listed.

(h) *Designated community in a major television market.* A community listed in § 76.51.

(i) *Smaller television market.* The specified zone of a commercial television station licensed to a community that is not listed in § 76.51.

(j) *Substantially duplicated.* Regularly duplicated by the network programing of one or more stations in a week

during the hours of 6 to 11 p.m., local time, for a total of 14 or more hours.

(k) *Significantly viewed.* Viewed in other than cable television households as follows: (1) For a full or partial network station—a share of viewing hours of at least 3 percent (total week hours), and a net weekly circulation of at least 25 percent; and (2) for an independent station—a share of viewing hours of at least 2 percent (total week hours), and a net weekly circulation of at least 5 percent. See § 76.54.

NOTE: As used in this paragraph, "share of viewing hours" means the total hours that noncable television households viewed the subject station during the week, expressed as a percentage of the total hours these households viewed all stations during the period, and "net weekly circulation" means the number of noncable television households that viewed the station for 5 minutes or more during the entire week, expressed as a percentage of the total noncable television households in the survey area.

(l) *Full network station.* A commercial television broadcast station that generally carries in weekly prime time hours 85 percent of the hours of programing offered by one of the three major national television networks with which it has a primary affiliation (i.e., right of first refusal or first call).

(m) *Partial network station.* A commercial television broadcast station that generally carries in prime time more than 10 hours of programming per week offered by the three major national television networks, but less than the amount specified in paragraph (l) of this section.

(n) *Independent station.* A commercial television broadcast station that generally carries in prime time not more than 10 hours of programming per week offered by the three major national television networks.

(o) *Network programming.* The programing supplied by a national or regional television network, commercial or noncommercial.

(p) *Syndicated program.* Any program sold, licensed, distributed, or offered to television station licensees in more than one market within the United States for noninterconnected (i.e., nonnetwork) television broadcast exhibition, but not including live presentations.

(q) *Series.* A group of two or more works which are centered around, and dominated by the same individual, or which have the same, or substantially the same, cast of principal characters or a continuous theme or plot.

(r) *Off-network series.* A series whose episodes have had a national network television exhibition in the United States or a regional network exhibition in the relevant market.

(s) *First-run series.* A series whose episodes have had no national network television exhibition in the United States and no regional network exhibition in the relevant market.

(t) *First-run nonseries programs.* Programs, other than series, that have had no national network television exhibition in the United States and no regional network exhibition in the relevant market.

(u) *Prime time.* The 5-hour period from 6 to 11 p.m., local time, except that in the central time zone the relevant period shall be between the hours of 5 and 10 p.m., and in the mountain time zone each station shall elect whether the period shall be 6 to 11 p.m. or 5 to 10 p.m.

NOTE: Unless the Commission is notified to the contrary, a station in the mountain time zone shall be presumed to have elected the 6 to 11 p.m. period.

(v) *Cablecasting.* Programing (exclusive of broadcast signals) carried on a cable television system. See paragraphs (aa), (bb), and (cc) (Classes II, III, and IV cable television channels) of this section.

(w) *Origination cablecasting.* Programing (exclusive of broadcast signals) carried on a cable television system over one or more channels and subject to the exclusive control of the cable operator.

(x) *Access cablecasting.* Services provided by a cable television system on its public, educational, local government, or leased channels.

(y) *Legally qualified candidate.* Any

person who has publicly announced that he is a candidate for nomination by a convention of a political party or for nomination or election in a primary, special, or general election, municipal, county, State, or national, and who meets the qualifications prescribed by the applicable laws to hold the office for which he is candidate, so that he may be voted for by the electorate directly or by means of delegates or electors, and who:

(1) Has qualified for a place on the ballot, or

(2) Is eligible under the applicable law to be voted for by sticker, by writing his name on the ballot, or other method, and (i) has been duly nominated by a political party which is commonly known and regarded as such, or (ii) makes a substantial showing that he is a bona fide candidate for nomination or office.

(z) *Class I cable television channel.* A signaling path provided by a cable television system to relay to subscriber terminals television broadcast programs that are received off-the-air or are obtained by microwave or by direct connection to a television broadcast station.

(aa) *Class II cable television channel.* A signaling path provided by a cable television system to deliver to subscriber terminals television signals that are intended for reception by a television broadcast receiver without the use of an auxiliary decoding device and which signals are not involved in a broadcast transmission path.

(bb) *Class III cable television channel.* A signaling path provided by a cable television system to deliver to subscriber terminals signals that are intended for reception by equipment other than a television broadcast receiver or by a television broadcast receiver only when used with auxiliary decoding equipment.

(cc) *Class IV cable television channel.* A signaling path provided by a cable television system to transmit signals of any type from a subscribed terminal to another point in the cable television system.

(dd) *Channel frequency response.* The relationship within a cable television channel between amplitude and frequency of a constant amplitude input signal as measured at a subscriber terminal.

(ee) *Subscriber terminal.* The cable television system terminal to which a subscriber's equipment is connected. Separate terminals may be provided for delivery of signals of various classes.

(ff) *System noise.* That combination of undesired and fluctuating disturbances within a cable television channel that degrades the transmission of the desired signal and that is due to modulation processes or thermal or other noise-producing effects, but does not include hum and other undesired signals of discrete frequency. System noise is specified in terms of its rms voltage or its mean power level as measured in the 4 MHz bandwidth between 1.25 and 5.25 MHz above the lower channel boundary of a cable television channel.

(gg) *Terminal isolation.* The attenuation, at any subscriber terminal, between that terminal and any other subscriber terminal in the cable television system.

(hh) *Visual signal level.* The rms voltage produced by the visual signal during the transmission of synchronizing pulses.

§ 76.7 Special relief.

(a) On petition by a cable television system, a franchising authority, an applicant, permittee, or licensee of a television broadcast, translator, or microwave relay station, or by any other interested person, the Commission may waive any provision of the rules relating to cable television systems, impose additional or different requirements, or issue a ruling on a complaint or disputed question.

(b) The petition may be submitted informally, by letter, but shall be accompanied by an affidavit of service on any cable television system, franchising authority, station licensee, permittee, or applicant, or other interested person who may be directly affected if the relief requested in the petition should be granted.

(c) (1) The petition shall state the relief requested and may contain alternative requests. It shall state fully and precisely all pertinent facts and considerations relied on to demonstrate the need for the relief requested and to support a determination that a grant of such relief would serve the public interest. Factual allegations shall be supported by affidavit of a person or persons with actual knowledge of the facts, and exhibits shall be verified by the person who prepares them.

(2) A petition for a ruling on a complaint or disputed question shall set forth all steps taken by the parties to resolve the problem, except where the only relief sought is a clarification or interpretation of the rules.

(3) If a petition involves more than one cable television community, three (3) copies of it should be filed for each such community, in addition to the number of copies otherwise required to be filed pursuant to § 1.51 of this chapter.

(d) Interested persons may submit comments or opposition to the petition within thirty (30) days after it has been filed. For good cause shown in the petition, the Commission may, by letter or telegram to known interested persons, specify a shorter time for such submissions. Comments or oppositions shall be served on petitioner and on all persons listed in petitioner's affidavit of service, and shall contain a detailed full showing, supported by affidavit, of any facts or considerations relied on.

(e) The petitioner may file a reply to the comments or oppositions within twenty (20) days after their submission, which shall be served on all persons who have filed pleadings and shall also contain a detailed full showing, supported by affidavit, of any additional facts or considerations relied on. For good cause shown, the Commission may specify a shorter time for the filing of reply comments.

(f) The Commission, after consideration of the pleadings, may determine whether the public interest would be served by the grant, in whole or in part, or denial of the request, or may issue a ruling on the complaint or dispute. The Commission may specify other procedures, such as oral argument, evidentiary hearing, or further written submissions directed to particular aspects as it deems appropriate. In the event that an evidentiary hearing is required, the Commission will determine, on the basis of the pleadings and such other procedures as it may specify, whether temporary relief should be afforded any party pending the hearing and the nature of any such temporary relief.

(g) Where a petition for waiver of the provisions of §§ 76.57(a), 76.59(a), 76.61(a), or 76.63(a), is filed within fifteen (15) days after a request for carriage, a cable television system need not carry the signal of the requesting station pending the Commission's ruling on the petition or on the question of temporary relief pending further proceedings.

(h) On a finding that the public interest so requires, the Commission may determine that a cable television system operating or proposing to operate in a community located outside of the 48 contiguous states shall comply with provisions of Subparts D, F, and G of this part in addition to the provisions thereof otherwise applicable. In such instances, any additional signal carriage that is authorized shall be deemed to be pursuant to the appropriate provision of §§ 76.61 (b) or 76.63(a) (as it relates to § 76.61 (b)).

Subpart B—Applications and Certificates of Compliance

§ 76.11 Certificate of compliance required.

(a) No cable television system shall commence operations or add a television broadcast signal to existing operations unless it receives a certificate of compliance from the Commission.

(b) No cable television system lawfully carrying television broadcast signals in a community prior to March 31, 1972, shall continue carriage of such signals beyond the end of its current franchise period or March 31, 1977, whichever occurs first, unless it receives a certificate of compliance.

(c) A cable television system to which paragraph (b) of this section applies may continue to carry television broadcast signals after expiration of the period specified therein, if an application for certificate is filed at least thirty (30) days prior to the date on which a certificate would otherwise be required and the Commission has not acted on the application.

(d) A certificate of compliance that is granted pursuant to this section shall be valid until the unamended expiration date of the franchise under which the certificated cable television system is operating or will operate, unless the Commission otherwise orders. A cable system may continue to carry television broadcast signals after the expiration of its certificate, if an application for a new certificate is filed at least thirty (30) days prior to the expiration date of the existing certificate and the Commission has not acted on the application.

§ 76.13 Filing of applications.

No standard form is prescribed in connection with the filing of an application for a certificate of compliance; however, three (3) copies of the following information must be provided:

(a) For a cable television system not operational prior to March 31, 1972 (other than systems that were authorized to carry one or more television signals prior to March 31, 1972, but did not commence such carriage prior to that date), an application for certificate of compliance shall include:

(1) The name and mailing address of the operator of the proposed system, community and area to be served, television signals to be carried (other than those permitted to be carried pursuant to § 76.61(b)(2)(ii) or § 76.63(a) (as it related to § 76.61(b)(2)(ii)), proposed date on which cable operations will commence, and, if applicable, a statement that microwave radio facilities are to be used to relay one or more signals;

(2) A copy of FCC Form 325, "Annual Report of Cable Television Systems," supplying the information requested as though the cable system were already in operation as proposed;

(3) A copy of the franchise, license, permit, or certificate granted to construct and operate a cable television system;

(4) A statement that explains how the proposed system's franchise and its plans for availability and administration of access channels and other nonbroadcast cable services are consistent with the provisions of §§ 76.31, 76.201, and 76.251;

NOTE: If the proposed system's franchise was issued prior to March 31, 1972, only substantial consistency with the provisions of § 76.31 need be demonstrated in the statement required in subparagraph (4), until the end of the current franchise period, or March 31, 1977, whichever occurs first.

(5) A statement that explains, in terms of the provisions of Subpart D of this part, how carriage of the proposed television signals is consistent with those provisions, including any special showings as to whether a signal is significantly viewed (see § 76.54(b));

(6) An affidavit of service of the information described in subparagraph (1) of this paragraph on the licensee or permittee of any television broadcast station within whose predicted Grade B contour or specified zone the community of the system is located, in whole or in part, the

licensee or permittee of any 100-watt or higher power television translator station licensed to the community of the system, the superintendent of schools in the community of the system, and any local or state educational television authorities;

(7) A statement that a copy of the complete application has been served on the franchising authority, and that if such application is not made available for public inspection by the franchising authority, the applicant will provide for public inspection of the application at any accessible place (such as a public library, public registry for documents, or an attorney's office) in the community of the system at any time during regular business hours;

(8) A statement of the proposed system's equal employment opportunity program, as described in § 76.311. However, if the operator of the proposed system believes that the system will (continuously during January, February, and March of the year following commencement of operations) satisfy the conditions in § 76.311(c)(1)(i)(*b*), he may submit a statement justifying that conclusion in lieu of a statement of the proposed system's equal employment opportunity program.

(9) A statement that the filing fee prescribed in § 1.1116 of this chapter is attached.

(b) For a cable television system that proposes to add a television signal to existing operations, or that was authorized to carry one or more television signals prior to March 31, 1972, but did not commence such carriage prior to that date, an application for certificate of compliance shall include:

(1) The name and mailing address of the system, commmunity and area served or to be served, television signals already being carried, television signals authorized to be carried but not carried prior to March 31, 1972, television signals not previously authorized and now proposed to be carried (other than those permitted to be carried pursuant to § 76.61(b)(2)(ii) or § 76.63(a) (as it relates to § 76.61(b)(2)(ii)), and, if applicable, a statement that microwave relay facilities are to be used to relay one or more signals;

(2) If the system has not commenced operations but has been authorized to carry one or more television signals, a copy of FCC Form 325, "Annual Report of Cable Television Systems," supplying the information requested as though the cable system were already in operation as proposed;

(3) If the system has not commenced operations but has been authorized to carry one or more television signals, a copy of the franchise, license, permit, or certificate granted to construct and operate a cable television system, and a statement that explains how the system's franchise is substantially consistent with the provisions of § 76.31;

NOTE: If only substantial consistency with the provisions of § 76.31 is demonstrated in the statement required in subparagraph (3), a certificate of compliance that is granted pursuant to § 76.11 shall be valid only until the end of the system's current franchise period, or March 31, 1977, whichever occurs first.

(4) A statement that explains how the system's plans for availability and administration of access channels and other nonbroadcast cable services are consistent with the provisions of §§ 76.201 and 76.251;

(5) A statement that explains, in terms of the provisions of Subpart D of this part, how carriage of the television signals not previously authorized is consistent with those provisions, including any special showings as to whether a signal is significantly viewed (see § 76.54(b));

(6) An affidavit of service of the information described in subparagraph (1) of this paragraph on the parties named in paragraph (a)(6) of this section;

(7) A statement that a copy of the complete application has been served on the franchising authority, and that if such application is not made available for public inspection by the franchising authority, the applicant will provide for public inspection of the application at any accessible place (such as a public library, pub-

lic registry for documents, or an attorney's office) in the community of the system at any time during regular business hours;

(8) A statement that the filing fee prescribed in § 1.1116 of this chapter is attached.

(c) For a cable television system seeking certification of existing operations in accordance with § 76.11(b), an application for certificate of compliance shall include:

(1) The name and mailing address of the system, community and area served, television signals being carried (other than those permitted to be carried pursuant to § 76.61(b)(2)(ii) or § 76.63(a) (as it relates to § 76.61(b)(2)(ii)), television signals authorized or certified to be carried but not being carried, date on which operations commenced, and date on which its current franchise expires;

(2) A copy of the franchise, license, permit, or certificate under which the system will operate upon Commission certification (if such franchise has not previously been filed), and a statement that explains how the franchise is consistent with the provisions of § 76.31;

(3) A statement that explains how the system's plans for availability and administration of access channels and other nonbroadcast cable services are consistent with the provisions of §§ 76.201 and 76.251;

(4) An affidavit of service of the information described in subparagraph (1) of this paragraph on the parties named in paragraph (a)(6) of this section;

(5) A statement that a copy of the complete application has been served on the franchising authority, and that if such application is not made available for public inspection by the franchising authority, the applicant will provide for public inspection of the application at any accessible place (such as a public library, public registry for documents, or an attorney's office) in the community of the system at any time during regular business hours;

(6) A statement that the filing fee prescribed in § 1.1116 of this chapter is attached.

NOTE: As used in § 76.13, the term "predicted Grade B contour" means the field intensity contour defined in § 73.683(a) of this chapter, the location of which is determined exclusively by means of the calculations prescribed in § 73.684 of this chapter.

§ 76.16 Who may sign applications.

(a) Applications for certificates of compliance, amendments thereto, and related statements of fact required by the Commission shall be personally signed by the applicant, if the applicant is an individual; by one of the partners, if the applicant is a partnership; by an officer, if the applicant is a corporation; or by a member who is an officer, if the applicant is an unincorporated association. Applications, amendments, and related statements of fact filed on behalf of Government entities shall be signed by such duly elected or appointed officials as may be competent to do so under the laws of the applicable jurisdiction.

(b) Applications, amendments thereto, and related statements of fact required by the Commission may be signed by the applicant's attorney in case of the applicant's physical disability or of his absence from from the United States. The attorney shall in that event separately set forth the reasons why the application is not signed by the applicant. In addition, if any matter is stated on the basis of the attorney's belief only (rather than his knowledge), he shall separately set forth his reasons for believing that such statements are true.

(c) Only the original of applications, amendments, or related statements of fact need be signed; copies may be conformed.

§ 76.18 Amendment of applications.

An application for a certificate of compliance may be amended as a matter of right prior to the adoption date of any final action taken by the Commission

with respect to the application, merely by filing three (3) copies of the amendment in question duly executed in accordance with § 76.16. All amendments shall be served on the franchising authority, on all parties that have filed pleadings responsive to the application, and, if the addition or deletion of a television broadcast signal is involved, on all parties served pursuant to § 76.13. Amendments shall be made available for public inspection in the same manner as the application.

§ 76.20 Dismissal of applications.

(a) An application for a certificate of compliance may, upon request of the applicant, be dismissed without prejudice as a matter of right prior to the adoption date of any final action taken by the Commission with respect to the application. An applicant's request for the return of an application will be regarded as a request for dismissal.

(b) Failure to prosecute an application, or failure to respond to official correspondence or request for additional information, will be cause for dismissal. Such dismissal will be without prejudice if it occurs prior to the adoption date of any final action taken by the Commission with respect to the application.

§ 76.25 Public notice.

The Commission will give public notice of the filing of applications for certificates of compliance and of amendments thereto that add or delete television signals. A certificate will not be issued sooner than thirty (30) days from the date of public notice.

§76.27 Objections to applications; related matters.

An objection to an application for certificate of compliance or an amendment thereto shall be filed within thirty (30) days of the public notice described in § 76.25. A reply may be filed within twenty (20) days after an objection is filed. Factual allegations shall be supported by affidavit of a person or persons with actual knowledge of the facts, and exhibits shall be verified by the person who prepares them. All pleadings shall be served on the persons specified in § 76.13, the cable television system, the franchising authority, and any other interested person. Controversies concerning carriage (Subpart D) and program exclusivity (§ 76.91) will be acted on in connection with the certificating process if raised within thirty (30) days of the public notice; any other objection will be treated as a petition for special relief filed pursuant to § 76.7.

Subpart C—Federal-State/Local Regulatory Relationships

§ 76.31 Franchise standards.

(a) In order to obtain a certificate of compliance, a proposed or existing cable television system shall have a franchise or other appropriate authorization that contains recitations and provisions consistent with the following requirements:

(1) The franchisee's legal, character, financial, technical, and other qualifications, and the adequacy and feasibility of its construction arrangements, have been approved by the franchising authority as part of a full public proceeding affording due process;

(2) The franchisee shall accomplish significant construction within one (1) year after receiving Commission certification, and shall thereafter equitably and reasonably extend energized trunk cable to a substantial percentage of its franchise area each year, such percentage to be determined by the franchising authority;

(3) The initial franchise period shall not exceed fifteen (15) years, and any renewal franchise period shall be of reasonable duration;

(4) The franchising authority has specified or approved the initial rates that the franchisee charges subscribers for installation of equipment and regular subscriber services. No increases in rates charged to subscribers shall be made except as authorized by the franchising authority after an appropriate public proceeding affording due process;

(5) The franchise shall specify procedures for the investigation and resolution of all complaints regarding the quality of service, equipment malfunctions, and similar matters, and shall require that the franchisee maintain a local business office or agent for these purposes;

(6) Any modifications of the provisions of this section resulting from amendment by the Commission shall be incorporated into the franchise within one (1) year of adoption of the modification, or at the time of franchise renewal, whichever occurs first. *Provided, however,* That, in an application for certificate of compliance, consistency with these requirements shall not be expected of a cable television system that was in operation prior to March 31, 1972, until the end of its current franchise period, or March 31, 1977, whichever occurs first; *And provided, further,* [illegible] a petition filed pursuant to § 76.7, [illegible] section with an application for certificate of compliance, the Commission may waive consistency with these requirements for a cable system that was not in operation prior to March 31, 1972, and that, relying on an existing franchise, made a significant financial investment or entered into binding contractual agreements prior to March 31, 1972, until the end of its current franchise period, or March 31, 1977, whichever comes first.

(b) The franchise fee shall be reasonable (e.g., in the range of 3–5 percent of the franchisee's gross subscriber revenues per year from cable television operations in the community (including all forms of consideration, such as initial lump sum payments)). If the franchise fee exceeds 3 percent of such revenues, the cable television system shall not receive Commission certification until the reasonableness of the fee is approved by the Commission on showings, by the franchisee, that it will not interfere with the effectuation of Federal regulatory goals in the field of cable television, and, by the franchising authority, that it is appropriate in light of the planned local regulatory program. The provisions of this paragraph shall not be effective with respect to a cable television system that was in operation prior to March 31, 1972, until the end of its current franchise period, or March 31, 1977, whichever occurs first.

Subpart D—Carriage of Television Broadcast Signals

§ 76.51 Major television markets.

For purposes of the cable television rules, the following is a list of the major television markets and their designated communities:

(a) First 50 major television markets:

(1) New York, N.Y.—Linden-Paterson, N.J.
(2) Los Angeles-San Bernardino-Corona-Fontana, Calif.
(3) Chicago, Ill.
(4) Philadelphia, Pa-Burlington, N.J.
(5) Detroit, Mich.
(6) Boston-Cambridge-Worcester, Mass.
(7) San Francisco-Oakland-San Jose, Calif.
(8) Cleveland-Lorain-Akron, Ohio.
(9) Washington, D.C.
(10) Pittsburgh, Pa.
(11) St. Louis, Mo.
(12) Dallas-Fort Worth, Tex.
(13) Minneapolis-St. Paul, Minn.
(14) Baltimore, Md.
(15) Houston, Tex.
(16) Indianapolis-Bloomington, Ind.
(17) Cincinnati, Ohio-Newport, Ky.
(18) Atlanta, Ga.
(19) Hartford-New Haven Britain-Waterbury, Conn.
(20) Seattle-Tacoma, Wash.
(21) Miami, Fla.
(22) Kansas City, Mo.
(23) Milwaukee, Wis.
(24) Buffalo, N.Y.
(25) Sacramento-Stockton-Modesto, Calif.
(26) Memphis, Tenn.
(27) Columbus, Ohio.
(28) Tampa-St. Petersburg, Fla.
(29) Portland, Oreg.
(30) Nashville, Tenn.
(31) New Orleans, La.
(32) Denver, Colo.
(33) Providence, R.I.-New Bedford, Mass.
(34) Albany-Schenectady-Trop, N.Y.
(35) Syracuse, N.Y.
(36) Charleston-Huntington, W. Va.
(37) Kalamazoo-Grand Rapids-Muskegon-Battle Creek, Mich.
(38) Louisville, Ky.
(39) Oklahoma City, Okla.
(40) Birmingham, Ala.
(41) Dayton-Kettering, Ohio.
(42) Charlotte, N.C.
(43) Phoenix-Mesa, Ariz.
(44) Norfolk-Newport News-Portsmouth-Hampton, Va.
(45) San Antonio, Tex.
(46 Greenville-Spartanburg-Anderson, S.C.-Asheville, N.C.
(47) Greensboro-High Point-Winston Salem, N.C.
(48) Salt Lake City, Utah.
(49) Wilkes Barre-Scranton, Pa.
(50) Little Rock, Ark.

(b) Second 50 major television markets:

(51) San Diego, Calif.
(52) Toledo, Ohio.
(53) Omaha, Nebr.
(54) Tulsa, Okla.
(55) Orlando-Daytona Beach, Fla.
(56) Rochester, N.Y.
(57) Harrisburg-Lancaster-York, Pa.
(58) Texarkana, Tex.-Shreveport, La.
(59) Mobile, Ala.-Pensacola, Fla.
(60) Davenport, Iowa-Rock Island-Moline, Ill.
(61) Flint-Bay City-Saginaw, Mich.
(62) Green Bay, Wis.
(63) Richmond-Petersburg, Va.
(64) Springfield - Decatur-Champaign-Jacksonville, Ill.
(65) Cedar Rapids-Waterloo, Iowa.
(66) Des Moines-Ames, Iowa.
(67) Wichita-Hutchinson, Kans.
(68) Jacksonville, Fla.
(69) Cape Girardeau, Mo.-Paducah, Ky.-Harrisburg, Ill.
(70) Roanoke-Lynchburg, Va.
(71) Knoxville, Tenn.
(72) Fresno, Calif.
(73) Raleigh-Durham, N.C.
(74) Johnstown-Altoona, Pa.
(75) Portland-Poland Spring, Maine.
(76) Spokane, Wash.
(77) Jackson, Miss.
(78) Chattanooga, Tenn.
(79) Youngstown, Ohio.
(80) South Bend-Elkhart, Ind.
(81) Albuquerque, N. Mex.
(82) Fort Wayne-Roanoke, Ind.
(83) Peoria, Ill.
(84) Greenville-Washington-New Bern, N.C.
(85) Sioux Falls-Mitchell, S. Dak.
(86) Evansville, Ind.
(87) Baton Rouge, La.
(88) Beaumont-Port Arthur, Tex.
(89) Duluth, Minn.-Superior, Wis.
(90) Wheeling, W. Va.-Steubenville, Ohio.
(91) Lincoln-Hastings-Kearney, Nebr.
(92) Lansing-Onoudaga, Mich.
(93) Madison, Wis.
(94) Columbus, Ga.
(95) Amarillo, Tex.
(96) Huntsville-Decatur, Ala.
(97) Rockford-Freeport, Ill.
(98) Fargo-Valley City, N. Dak.
(99) Monroe, La.-El Dorado, Ark.
(100) Columbia, S.C.

§ 76.53 Reference points.

To determine the boundaries of the major and smaller television markets (defined in § 76.5), the following list of reference points for communities having licensed television broadcast stations and/or outstanding construction permits shall be used. Where a community's reference point is not given, the geographic coordinates of the main post office in the community shall be used.

State and community	Latitude			Longitude		
	°	′	″	°	′	″
Alabama:						
Anniston	33	39	49	85	49	47
Birmingham	33	31	01	86	48	36
Decatur	34	36	35	86	58	45
Demopolis	32	30	56	87	50	07
Dothan	31	13	27	85	23	35
Dozier	31	29	30	86	21	30
Florence	34	48	05	87	40	31
Huntsville	34	44	18	86	35	19
Louisville	31	47	00	85	33	09
Mobile	30	41	36	88	02	33
Montgomery	32	22	33	86	18	31
Mount Cheaha State Park	32	29	06	85	48	30
Selma	32	24	26	87	01	15
Tuscaloosa	33	12	05	87	33	44
Alaska:						
Anchorage	61	13	09	149	53	29
College	64	51	22	147	48	36
Fairbanks	64	50	35	147	41	31
Juneau	58	18	06	134	25	09
Sitka	57	02	58	135	20	12
Arizona:						
Flagstaff	35	11	54	111	39	02
Mesa	33	24	54	111	49	41
Nogales	31	20	14	110	55	12
Phoenix	33	27	12	112	04	28
Tucson	32	13	15	110	58	08
Yuma	32	43	16	114	37	01
Arkansas:						
El Dorado	33	12	39	92	39	40
Fayetteville	36	08	41	94	09	36
Fort Smith	35	23	10	94	25	36
Jonesboro	35	50	14	90	42	11
Little Rock	34	44	42	92	16	37
California:						
Bakersfield	35	22	31	119	01	16
Chico	39	44	07	121	49	57
Concord	37	58	46	122	01	51
Corona	33	52	35	117	33	56
El Centro	32	47	25	115	32	45
Eureka	40	48	08	124	09	46
Fontana	34	05	45	117	26	29
Fresno	36	44	12	119	47	11
Guasti	34	03	48	117	35	10
Hanford	36	19	51	119	38	48
Los Angeles	34	03	15	118	14	28
Modesto	37	38	28	120	59	44
Monterey	36	35	44	121	53	39
Oakland	37	48	03	122	15	54
Palm Springs	33	49	22	116	32	46
Redding	40	34	57	122	23	34
Sacramento	38	34	57	121	29	41
Salinas	36	40	24	121	39	25
San Bernardino	34	06	30	117	17	28
San Diego	32	42	53	117	09	21
San Francisco	37	46	39	122	24	40
San Jose	37	20	16	121	53	24
San Luis Obispo	35	16	49	120	39	34
San Mateo	37	34	08	122	19	16
Santa Barbara	34	25	18	119	41	55
Santa Maria	34	57	02	120	26	10
California—Continued						
Stockton	37	57	30	121	17	16
Tulare	36	12	31	119	20	35
Ventura	34	16	47	119	17	22
Visalia	36	19	46	119	17	30
Colorado:						
Colorado Springs	38	50	07	104	49	16
Denver	39	44	58	104	59	22
Durango	37	16	29	107	52	25
Grand Junction	39	04	06	108	33	54
Montrose	38	28	44	107	52	31
Pueblo	38	16	17	104	36	33
Sterling	40	37	29	103	12	25
Connecticut:						
Bridgeport	41	10	49	73	11	22
Hartford	41	46	12	72	40	49
New Britain	41	40	02	72	47	06
New Haven	41	18	25	72	55	30
Norwich	41	31	36	72	04	31
Waterbury	41	33	13	73	02	31
Delaware:						
Wilmington	39	44	46	75	32	51
District of Columbia:						
Washington	38	53	51	77	00	39
Florida:						
Clearwater	27	57	56	82	47	51
Daytona Beach	29	12	44	81	01	19
Fort Lauderdale	26	07	11	80	08	34
Fort Myers	26	38	42	81	52	06
Fort Pierce	27	26	48	80	19	36
Gainesville	29	38	56	82	19	19
Jacksonville	30	19	44	81	39	42
Largo	27	54	54	82	47	37
Leesburg	28	48	43	81	52	30
Melbourne	28	04	41	80	36	29
Miami	25	46	37	80	11	22
Ocala	29	11	34	82	08	14
Orlando	28	32	42	81	22	36
Panama City	30	09	24	85	39	46
Pensacola	30	24	51	87	12	56
St. Petersburg	27	46	18	82	38	19
Sarasota	27	20	06	82	32	20
Tallahassee	30	26	30	84	16	36
Tampa	27	56	56	82	27	26
West Palm Beach	26	42	36	80	03	07
Georgia:						
Albany	31	34	36	84	09	22
Athens	33	57	34	83	22	30
Atlanta	33	45	10	84	23	37
Augusta	33	28	20	81	58	00
Chatsworth	34	46	08	84	46	10
Cochran	32	23	18	83	21	18
Columbus	32	28	07	84	59	24
Dawson	31	46	33	84	26	20
Macon	32	50	12	83	37	36
Pelham	31	07	42	84	09	02
Savannah	32	04	42	81	05	37
Thomasville	30	50	25	83	58	59
Waycross	31	12	19	82	21	47
Wrens	33	12	21	82	23	23
Guam:						
Agana	13	28	23	144	45	00
Hawaii:						
Hilo	19	43	42	155	05	30
Honolulu	21	18	26	157	51	48
Wailuku	20	53	21	156	30	27
Idaho:						
Boise	43	37	07	116	11	58
Idaho Falls	43	29	39	112	02	28
Lewiston	46	25	05	117	01	10
Moscow	46	43	56	116	59	54
Pocatello	42	51	38	112	27	01
Twin Falls	42	33	25	114	28	21
Illinois:						
Aurora	41	45	22	88	18	56
Bloomington	40	28	58	88	59	32
Carbondale	37	43	38	89	13	00
Champaign	40	07	05	88	14	48
Chicago	41	52	28	87	38	22
Decatur	39	50	37	88	57	11
Elgin	42	02	14	88	16	53
Freeport	42	17	57	89	37	07

State and community	Latitude			Longitude		
	°	′	″	°	′	″
Illinois—Continued						
Harrisburg	37	44	20	88	32	25
Jacksonville	39	44	03	90	13	44
Joliet	41	31	37	88	04	52
LaSalle	41	19	49	89	05	44
Mcline	41	30	31	90	30	49
Mount Vernon	38	18	29	88	54	26
Olney	38	43	47	88	05	00
Peoria	40	41	42	89	35	33
Quincy	39	55	59	91	24	12
Rockford	42	16	07	89	05	48
Rock Island	41	30	40	90	34	24
Springfield	39	47	58	89	36	51
Urbana	40	06	41	88	13	13
Indiana:						
Bloomington	39	09	56	86	31	52
Elkhart	41	40	56	85	58	15
Evansville	37	58	20	87	34	21
Fort Wayne	41	04	21	85	08	20
Gary	41	35	59	87	20	07
Hammond	41	35	13	87	27	43
Indianapolis	39	46	07	86	09	46
Lafayette	40	25	11	86	53	39
Marion	40	33	17	85	39	49
Muncie	40	11	28	85	23	16
Richmond	39	49	49	84	53	26
Roanoke	40	57	50	85	22	30
St. John	41	27	00	87	28	13
South Bend	41	40	33	86	15	01
Terre Haute	39	28	05	87	24	26
Vincennes	38	40	52	87	31	12
Iowa:						
Ames	42	01	36	93	36	44
Cedar Rapids	41	58	48	91	39	48
Davenport	41	31	24	90	34	21
Des Moines	41	35	14	93	37	00
Dubuque	42	29	55	90	40	08
Fort Dodge	42	30	12	94	11	05
Iowa City	41	39	37	91	31	52
Mason City	43	09	15	93	12	00
Sioux City	42	29	46	96	24	30
Waterloo	42	29	40	92	20	20
Kansas:						
Ensign	37	38	48	100	14	00
Garden City	37	57	54	100	52	20
Goodland	39	20	53	101	42	35
Great Bend	38	22	04	98	45	58
Hays	38	52	16	99	19	57
Hutchinson	38	03	11	97	55	20
Pittsburg	37	24	50	94	42	11
Salina	38	50	36	97	36	45
Topeka	39	03	16	95	40	23
Wichita	37	41	30	97	20	16
Kentucky:						
Ashland	38	28	36	82	38	23
Bowling Green	36	59	41	86	26	33
Covington	39	05	00	84	30	29
Elizabethtown	38	41	38	85	51	35
Hazard	37	14	54	83	11	31
Lexington	38	02	50	84	29	45
Louisville	38	14	47	85	45	49
Madisonville	37	19	45	87	29	54
Moorehead	38	10	53	83	26	08
Murray	36	36	35	88	18	30
Newport	39	05	28	84	29	20
Owensboro	37	46	27	87	06	46
Owenton	38	32	11	84	50	16
Paducah	37	05	13	88	35	58
Pikesville	37	28	49	82	31	09
Somerset	37	05	25	84	36	17
Louisiana:						
Alexandria	31	18	33	92	26	47
Baton Rouge	30	26	56	91	11	00
Houma	29	35	24	90	43	09
Lafayette	30	13	24	92	01	06
Lake Charles	30	13	45	93	12	52
Monroe	32	30	02	92	06	55
New Orleans	29	56	53	90	04	10
Shreveport	32	30	46	93	44	58
West Monroe	32	30	51	92	08	13

State and community	Latitude			Longitude		
	°	′	″	°	′	″
Maine:						
Augusta	44	18	53	69	46	29
Bangor	44	48	13	68	46	18
Calais	45	11	04	67	16	43
Orono	44	53	15	68	40	12
Poland Spring	44	01	42	70	21	40
Portland	43	39	33	70	15	19
Presque Isle	46	40	57	68	00	52
Maryland:						
Baltimore	39	17	26	76	36	45
Cumberland	39	39	01	78	45	45
Hagerstown	39	38	39	77	43	15
Salisbury	38	21	56	75	35	56
Massachusetts:						
Adams	42	37	30	73	07	05
Boston	42	21	24	71	03	25
Cambridge	42	21	58	71	06	24
Greenfield	42	35	15	72	35	54
New Bedford	41	38	13	70	55	41
Springfield	42	06	21	72	35	32
Worcester	42	15	37	71	48	17
Michigan:						
Allen Park	42	15	12	83	12	57
Battle Creek	42	18	58	85	10	48
Bay City	43	36	04	83	53	15
Cadillac	44	15	10	85	23	52
Cheboygan	45	38	38	84	28	38
Detroit	42	19	48	83	02	57
Escanaba	45	44	45	87	03	18
Flint	43	00	50	83	41	33
Grand Rapids	42	58	03	85	40	13
Jackson	42	14	43	84	24	22
Kalamazoo	42	17	29	85	35	14
Lansing	42	44	01	84	33	15
Marquette	46	32	37	87	23	43
Mount Pleasant	43	16	12	84	46	31
Muskegon	43	14	17	86	15	02
Onondaga	42	26	41	84	33	43
Saginaw	43	25	52	83	56	06
Sault Ste. Marie	46	29	58	84	20	37
Traverse City	44	45	47	85	37	25
University Center	43	33	31	83	89	09
Minnesota:						
Alexandria	45	53	06	95	22	39
Appleton	45	12	00	96	01	02
Austin	43	39	57	92	58	20
Duluth	46	46	56	92	[illegible]	24
Hibbing	47	25	43	92	56	21
Mankato	44	0[illegible]	49	94	00	09
Minneapolis	44	58	57	93	15	43
Rochester	44	01	21	92	28	08
St. Cloud	45	33	35	94	09	36
St. Paul	44	56	50	93	05	11
Walker	47	05	57	94	35	12
Mississippi:						
Biloxi	30	23	43	88	53	08
Bude	31	27	46	90	50	34
Columbus	33	29	40	88	25	33
Greenwood	33	31	05	90	10	55
Gulfport	30	22	04	89	05	36
Jackson	32	17	56	90	11	06
Laurel	31	41	40	89	07	48
Meridian	32	21	57	88	42	02
Oxford	34	22	00	89	31	07
State College	33	27	18	88	47	13
Tupelo	34	15	26	88	42	30
Missouri:						
Cape Girardeau	37	18	29	89	31	29
Columbia	38	57	08	92	19	44
Hannibal	39	42	24	91	22	45
Jefferson City	38	34	40	92	10	24
Joplin	37	05	26	94	30	50
Kansas City	39	04	56	94	35	20
Kirksville	40	11	37	92	34	56
Poplar Bluff	36	45	20	90	23	26
St. Joseph	39	45	57	94	51	02
St. Louis	38	37	45	90	12	22
Sedalia	38	42	06	93	13	28
Springfield	37	13	[illegible]	93	17	32

State and community	Latitude			Longitude		
	°	′	″	°	′	″
Montana:						
Anaconda	46	07	40	112	57	12
Billings	45	47	00	108	30	04
Butte	46	01	06	112	32	11
Glendive	47	06	42	104	43	02
Great Falls	47	29	33	111	18	23
Helena	46	35	33	112	02	24
Kalispell	48	11	45	114	18	44
Miles City	46	24	34	105	50	30
Missoula	46	52	23	113	59	29
Nebraska:						
Albion	41	41	23	97	59	53
Alliance	42	06	04	102	52	06
Bassett	42	35	00	99	32	10
Grand Island	40	55	33	98	20	23
Hastings	40	35	21	98	23	20
Hayes Center	40	30	36	101	01	18
Hay Springs	42	41	03	102	41	22
Kearney	40	41	58	99	04	53
Lexington	40	46	30	99	44	41
Lincoln	40	48	59	96	42	15
McCook	40	12	02	100	37	32
Merriman	42	55	07	101	42	02
Norfolk	42	01	56	97	24	42
North Platte	41	08	14	100	45	43
Omaha	41	15	42	96	56	14
Scottsbluff	41	51	40	103	39	00
Superior	40	01	12	98	04	00
Nevada:						
Elko	40	50	00	115	45	41
Henderson	36	02	00	114	58	57
Las Vegas	36	10	20	115	08	37
Reno	39	31	27	119	48	40
New Hampshire:						
Berlin	44	28	20	71	10	43
Durham	43	08	02	70	55	35
Hanover	43	42	03	72	17	24
Keene	42	56	02	72	16	44
Lebanon	43	38	34	72	18	12
Littleton	44	18	22	71	46	11
Manchester	42	59	28	71	27	43
New Jersey:						
Atlantic City	39	21	32	74	25	53
Burlington	40	04	21	74	51	47
Camden	39	56	45	75	07	20
Glen Ridge	40	48	16	74	12	14
Linden	40	37	57	74	15	22
Newark	40	44	14	74	10	19
New Brunswick	40	29	38	74	26	49
Paterson	40	54	51	74	09	51
Trenton	40	13	16	74	45	28
Vineland	39	29	13	75	01	17
Wildwood	38	59	18	74	48	43
New Mexico:						
Albuquerque	35	05	01	106	39	05
Carlsbad	32	25	09	104	13	47
Clovis	34	24	11	103	12	08
Portales	34	10	58	103	20	10
Roswell	33	23	47	104	31	26
New York:						
Albany	42	39	01	73	45	01
Binghamton	42	06	03	75	54	47
Buffalo	42	52	52	78	52	21
Carthage	43	58	50	75	36	28
Elmira	42	05	28	76	48	22
Garden City	40	43	38	73	38	08
Ithaca	42	26	33	76	29	42
Jamestown	42	05	45	79	14	40
New York	40	45	08	73	59	30
North Pole	44	23	59	73	51	00
Norwood	44	45	00	75	59	30
Oneonta	42	27	21	75	03	42
Patchogue	40	45	56	73	00	42
Plattsburgh	44	42	08	73	27	07
Riverhead	40	55	06	72	39	51
Rochester	43	09	41	77	36	21
Schenectady	42	48	52	73	56	24
Syracuse	43	08	04	76	09	14
Utica	43	06	12	75	13	33
Watertown	43	58	30	75	54	48
North Carolina:						
Ashville	35	35	42	82	33	26
Chapel Hill	35	54	51	79	03	11
Charlotte	35	13	44	80	50	45
Columbia	35	55	06	76	15	04
Concord	35	24	29	80	34	45
Durham	35	59	48	78	54	00
Fayetteville	35	03	12	78	52	54
Greensboro	36	04	17	79	47	25
Greenville	35	36	40	77	22	23
Hickory	35	43	54	81	20	20
High Point	35	57	14	80	00	15
Jacksonville	34	45	00	77	25	54
Linville	36	04	08	81	52	16
New Bern	35	06	33	77	02	23
Raleigh	35	46	38	78	38	21
Washington	35	32	35	77	06	16
Wilmington	34	14	14	77	56	58
Winston-Salem	36	05	52	80	14	42
North Dakota:						
Bismark	46	48	23	100	47	17
Devils Lake	48	06	42	98	51	20
Dickinson	46	52	55	102	47	06
Fargo	46	52	30	96	47	18
Minot	48	14	09	101	17	38
Pembina	48	58	00	97	14	37
Valley City	46	55	31	98	00	04
Williston	48	08	47	103	36	59
Ohio:						
Akron	41	05	00	81	30	44
Athens	39	19	38	82	06	09
Bowling Green	41	22	37	83	39	08
Canton	40	47	50	81	22	37
Cincinnati	39	06	07	84	30	35
Cleveland	41	29	51	81	41	50
Columbia	39	57	47	83	03	17
Dayton	39	45	32	84	11	43
Kettering	39	41	22	84	10	07
Lima	40	44	29	84	08	24
Lorain	41	27	48	82	10	23
Marion	40	35	14	83	07	36
Newark	40	03	35	82	24	15
Oxford	39	30	28	84	44	28
Portsmouth	38	44	06	82	59	39
Springfield	39	55	38	83	48	29
Steubenville	40	21	42	80	36	53
Toledo	41	39	14	83	32	39
Youngstown	41	05	57	80	39	02
Zanesville	39	56	59	82	00	56
Oklahoma:						
Ada	34	46	24	96	40	26
Ardmore	34	10	18	97	07	50
Lawton	34	36	27	98	23	41
Oklahoma City	35	28	26	97	31	04
Sayre	35	17	34	99	38	23
Tulsa	36	09	12	95	59	34
Oregon:						
Coos Bay	43	22	02	124	13	09
Corvallis	44	34	10	123	16	12
Eugene	44	03	16	123	05	30
Klamath Falls	42	13	32	121	46	32
La Grande	45	19	47	118	05	45
Medford	42	19	33	122	52	31
Portland	45	31	06	122	40	35
Roseburg	43	12	34	123	20	28
Salem	44	56	21	123	01	50
Pennsylvania:						
Allentown	40	36	11	75	28	06
Altoona	40	30	55	78	24	08
Bethlehem	40	37	57	75	21	36
Clearfield	41	01	30	78	26	10
Erie	42	07	15	80	04	57
Harrisburg	40	15	43	76	53	59
Hershey	40	17	04	76	39	01
Johnstown	40	19	35	78	55	08
Lancaster	40	02	25	76	18	29
Philadelphia	39	56	58	75	09	21
Pittsburgh	40	26	19	80	00	00
Reading	40	20	09	75	55	40
Scranton	41	24	32	75	39	46
Wilkes-Barre	41	14	32	75	53	17
York	39	57	35	76	43	36

State and community	Latitude			Longitude		
	°	′	″	°	′	″
Puerto Rico:						
Aguadilla	18	25	53	67	09	18
Arecibo	18	28	26	66	43	39
Caguas	18	13	59	66	02	06
Fajardo	18	19	35	65	39	21
Mayaguez	18	12	16	67	08	36
Ponce	18	00	51	66	36	58
San Juan	18	26	55	66	08	55
Rhode Island:						
Providence	41	49	32	71	24	41
South Carolina:						
Allendale	33	00	30	81	18	26
Anderson	34	30	06	82	38	54
Charleston	32	46	35	79	55	53
Columbia	34	00	02	81	02	00
Florence	34	11	49	79	46	06
Greenville	34	50	50	82	24	01
Spartanburg	34	57	08	81	56	06
South Dakota:						
Aberdeen	45	27	31	98	29	09
Brookings	44	18	38	96	47	53
Florence	45	08	14	97	19	35
Lead	44	21	07	103	46	03
Mitchell	43	42	48	98	01	26
Pierre	44	22	06	100	20	57
Rapid City	44	04	52	103	13	11
Reliance	43	52	45	99	36	18
Sioux Falls	43	32	35	96	43	35
Vermillion	42	46	52	96	55	35
Tennessee:						
Chattanooga	35	02	41	85	18	32
Jackson	35	36	46	88	49	15
Johnston City	36	19	04	82	20	56
Kingsport	36	32	57	82	33	44
Knoxville	35	57	30	83	55	07
Lexington	35	38	56	88	23	31
Memphis	35	08	46	90	08	13
Nashville	36	09	33	86	46	55
Sneedville	36	31	46	83	13	04
Texas:						
Abilene	32	27	05	99	43	51
Amarillo	35	12	27	101	50	04
Austin	30	16	09	97	44	37
Beaumont	30	05	20	94	06	09
Belton	31	03	31	97	27	39
Big Spring	32	15	03	101	28	38
Bryan	30	38	48	96	21	31
College Station	30	37	05	96	20	41
Corpus Christi	27	47	51	97	23	45
Dallas	32	47	09	96	47	37
El Paso	31	45	36	106	29	11
Fort Worth	32	44	55	97	19	44
Galveston	29	18	16	94	47	42
Harlingen	26	11	29	97	41	35
Houston	29	45	36	95	21	37
Laredo	27	30	22	99	30	30
Longview	32	28	54	94	43	45
Lubbock	33	35	05	101	50	33
Lufkin	31	20	14	94	43	21
Midland	31	59	54	102	04	31
Monohans	31	35	18	102	53	26
Nacogodches	31	36	13	94	39	20
Odessa	31	50	49	102	22	01
Port Arthur	29	52	09	93	56	01
Richardson	32	57	56	96	44	05
Rosenberg	29	33	30	95	48	15
San Angelo	31	27	30	100	26	03
San Antonio	29	25	37	98	29	08
Sweetwater	32	28	24	100	24	18
Temple	31	06	02	97	20	22
Texarkana	33	25	29	94	02	34
Tyler	32	21	21	95	17	52
Victoria	28	48	01	97	00	09
Waco	31	33	12	97	08	00
Weslaco	26	09	24	97	59	33
Wichita Falls	33	54	34	98	29	28
Utah:						
Logan	41	44	08	111	50	11
Ogden	41	13	31	111	58	21
Provo	40	14	07	111	39	34
Salt Lake City	40	45	21	111	53	26
Vermont:						
Burlington	44	28	34	73	12	45
Rutland	43	36	29	72	58	56
St. Johnsbury	44	25	16	72	01	13
Windsor	44	28	38	72	23	32
Virginia:						
Bristol	36	35	48	82	11	04
Charlottesville	38	01	52	78	28	50
Goldvein	38	26	54	77	39	19
Hampton	37	01	32	76	20	32
Harrisonburg	38	27	01	78	52	07
Lynchburg	37	24	51	79	08	37
Norfolk	36	51	10	76	17	21
Norton	36	56	05	82	37	31
Petersburg	37	13	40	77	24	15
Portsmouth	36	50	12	76	17	54
Richmond	37	32	15	77	26	09
Roanoke	37	16	13	79	56	44
Staunton	38	09	02	79	04	34
Virgin Islands:						
Charlotte Amalie	18	20	36	64	55	53
Christiansted	17	44	44	64	42	21
Washington:						
Bellingham	48	45	02	122	28	36
Kennewick	46	12	28	119	08	32
Lakewood Center	47	07	37	122	31	15
Pasco	46	13	50	119	05	27
Pullman	46	43	42	117	10	46
Richland	46	16	36	119	16	21
Seattle	47	36	32	122	20	12
Spokane	47	39	32	117	25	33
Tacoma	47	14	59	122	26	15
Yakima	46	36	09	120	30	39
West Virginia:						
Bluefield	37	15	29	81	13	20
Charleston	38	21	01	81	37	52
Clarksburg	39	16	50	80	20	38
Grandview	37	49	28	81	04	20
Huntington	38	25	12	82	26	33
Morgantown	39	37	41	79	57	28
Oak Hill	37	58	31	81	08	45
Parkersburg	39	15	57	81	33	46
Weston	39	02	19	80	28	05
Wheeling	40	04	08	80	43	20
Wisconsin:						
Eau Claire	44	48	31	91	29	49
Fond Du Lac	43	46	35	88	26	52
Green Bay	44	30	48	88	00	50
Janesville	42	40	52	89	01	30
Kenosha	42	35	04	87	49	14
La Crosse	43	48	48	91	15	02
Madison	43	04	23	89	22	55
Milwaukee	43	02	19	87	54	15
Rhinelander	45	38	09	89	24	50
Superior	46	43	14	92	06	07
Wausau	44	57	30	89	37	40
Wyoming:						
Casper	42	51	00	106	19	22
Cheyenne	41	08	09	104	49	07
Rawlins	41	47	23	107	14	37
Riverton	43	01	29	108	23	08

§ 76.54 Significantly viewed signals; method to be followed for special showings.

(a) Signals that are significantly viewed in a county (and thus are deemed to be significantly viewed within all communities within the county) are those that are listed in Appendix B of the Memorandum Opinion and Order on Reconsideration of the Cable Television Re-

529-214 O - 74 - 8

port and Order (Docket 18397 et al.), FCC 72-530.

(b) On or after March 31, 1973, significant viewing in a cable television community for signals not shown as significantly viewed under paragraph (a) of this section may be demonstrated by an independent professional audience survey of noncable television homes that covers at least two weekly periods separated by at least thirty (30) days but no more than one of which shall be a week between the months of April and September. If two surveys are taken, they shall include samples sufficient to assure that the combined surveys result in an average figure at least one standard error above the required viewing level. If surveys are taken for more than 2 weekly periods in any 12 months, all such surveys must be submitted and the combined surveys must result in an average figure at least one standard error above the required viewing level.

(c) Notice of a survey to be made pursuant to paragraph (b) of this section shall be served on all licensees or permittees of television broadcast stations within whose predicted Grade B contour the cable community is located, in whole or in part, and on all cable systems, franchisees, and franchise applicants in the cable community at least thirty (30) days prior to the initial survey period. Such notice shall include the name of the survey organization and a description of the procedures to be used. Objections to survey organizations or procedures shall be served on the party sponsoring the survey within twenty (20) days after receipt of such notice.

NOTE: With respect to those counties designated by an asterisk in Appendix B of the Memorandum Opinion and Order on Reconsideration of the Cable Television Report and Order (Docket 18397 et al.), FCC 72-530, surveys of significant viewing made pursuant to § 76.54(b) may be submitted prior to March 31, 1973.

§ 76.55 Manner of carriage.

(a) Where a television broadcast signal is required to be carried by a cable television system, pursuant to the rules in this subpart:

(1) The signal shall be carried without material degradation in quality (within the limitations imposed by the technical state of the art), and where applicable, in accordance with the technical standards of Subpart K of this part;

(2) The signal shall, on request of the station licensee or permittee, be carried on the system on the channel number on which the station is transmitting, except where technically infeasible;

(3) The signal shall, on request of the station licensee or permittee, be carried on the system or no more than one channel.

(b) Where a television broadcast signal is carried by a cable television system, pursuant to the rules in this subpart, the programs broadcast shall be carried in full, without deletion or alteration of any portion except as required by this part.

(c) A cable television system need not carry the signal of any television translator station if (1) the system is carrying the signal of the originating station, or (2) the community of the system is located, in whole or in part, within the Grade B contour of a station carried on the system whose programing is substantially duplicated by the translator station.

(d) If the community of a cable television system is located, in whole or in part, within the Grade B contour of both a satellite and its parent television station, and if the system would otherwise be required to carry both of them pursuant to the rules in this subpart, the system need carry only one of these signals, and may select between them.

§ 76.57 Provisions for systems operating in communities located outside of all major and smaller television markets.

A cable television system operating in a community located wholly outside all major and smaller television markets, as defined in § 76.5, shall carry television

broadcast signals in accordance with the following provisions:

(a) Any such cable television system may carry or, on request of the relevant station licensee or permittee, shall carry the signals of:

(1) Television broadcast stations within whose Grade B contours the community of the system is located, in whole or in part;

(2) Television translator stations with 100 watts or higher power serving the community of the system and, as to cable systems that commence operations or expand channel capacity after March 30, 1972, non-commercial educational translator stations with 5 watts or higher power serving the community of the system. In addition, any cable system may elect to carry the signal of any noncommercial educational translator station;

(3) Noncommercial educational television broadcast stations within whose specified zone the community of the system is located, in whole or in part;

(4) Commercial television broadcast stations that are significantly viewed in the community of the system. See § 76.54.

(b) In addition to the television broadcast signals carried pursuant to paragraph (a) of this section, any such cable television system may carry any additional television signals.

§ 76.59 Provisions for smaller television markets.

A cable television system operating in a community located in whole or in part within a smaller television market, as defined in § 76.5, shall carry television broadcast signals only in accordance with the following provisions:

(a) Any such cable television system may carry or, on request of the relevant station licensee or permittee, shall carry the signals of:

(1) Television broadcast stations within whose specified zone the community of the system is located, in whole or in part;

(2) Noncommercial educational television broadcast stations within whose Grade B contours the community of the system is located, in whole or in part;

(3) Commercial television broadcast stations licensed to communities in other smaller television markets, within whose Grade B contours the community of the system is located, in whole or in part;

(4) Television broadcast stations licensed to other communities which are generally considered to be part of the same smaller television market (Example: Burlington, Vt.—Plattsburgh, N.Y., television market);

(5) Television translator stations with 100 watts or higher power serving the community of the system and, as to cable systems that commence operations or expand channel capacity after March 30, 1972, noncommercial educational translator stations with 5 watts or higher power serving the community of the system. In addition, any cable system may elect to carry the signal of any noncommercial educational translator station;

(6) Commercial television broadcast stations that are significantly viewed in the community of the system. See § 76.54.

(b) Any such cable television system may carry sufficient additional signals so that, including the signals required to be carried pursuant to paragraph (a) of this section, it can provide the signals of a full network station of each of the major national television networks, and of one independent television station: *Provided, however*, That, in determining how many additional signals may be carried, any authorized but not operating television broadcast station that, if operational, would be required to be carried pursuant to paragraph (a) (1) of this section, shall be considered to be operational for a period terminating 18 months after grant of its initial construction permit. The following priorities are applicable to the additional television signals that may be carried:

(1) *Full network stations.* A cable television system may carry the nearest full network stations, or the nearest in-State full network stations;

NOTE: The Commission may waive the requirements of this subparagraph for good

cause shown in a petition filed pursuant to § 76.7.

(2) *Independent station.* A cable television system may carry any independent television station: *Provided, however,* That if a signal of a station in the first 25 major television markets (see § 76.51 (a)) is carried pursuant to this subparagraph, such signal shall be taken from one of the two closest such markets, where such signal is available.

NOTE: It is not contemplated that waiver of the provisions of this subparagraph will be granted.

(c) In addition to the noncommercial educational television broadcast signals carried pursuant to paragraph (a) of this section, any such cable television system may carry the signals of any noncommercial educational stations that are operated by an agency of the State within which the system is located. Such system may also carry any other noncommercial educational signals, in the absence of objections filed pursuant to § 76.7 by any local noncommercial educational station or State or local educational television authority.

(d) In addition to the television broadcast signals carried pursuant to paragraphs (a) through (c) of this section, any such cable television system may carry:

(1) Any television stations broadcasting predominantly in a non-English language; and

(2) Any television station broadcasting a network program that will not be carried by a station normally carried on the system. Carriage of such additional stations shall be only for the duration of the network programs not otherwise available, and shall not require prior Commission notification or approval in the certificating process.

(e) Where the community of a cable television system is wholly or partially within both one of the first 50 major television markets and a smaller television market, the carriage provisions for the first 50 major markets shall apply. Where the community of a system is wholly or partially within both one of the second 50 major television markets and a smaller television market, the carriage provisions for the second 50 major markets shall apply.

§ 76.61 Provisions for first 50 major television markets.

A cable television system operating in a community located in whole or in part within one of the first 50 major television markets listed in § 76.51(a) shall carry television broadcast signals only in accordance with the following provisions:

(a) Any such cable television system may carry, or on request of the relevant station licensee or permittee, shall carry the signals of:

(1) Television broadcast stations within whose specified zone the community of the system is located, in whole or in part: *Provided, however,* That where a cable television system is located in the designated community of a major television market, it shall not carry the signal of a television station licensed to a designated community in another major television market, unless the designated community in which the cable system is located is wholly within the specified zone (see § 76.5(f)) of the station, except as otherwise provided in this section;

(2) Noncommercial educational television broadcast stations within whose Grade B contours the community of the system is located, in whole or in part;

(3) Television translator stations with 100 watts or higher power serving the community of the system and, as to cable systems that commence operations or expand channel capacity after March 30, 1972, noncommercial educational translator stations with 5 watts or higher power serving the community of the system. In addition, any cable system may elect to carry the signal of any noncommercial educational translator station;

(4) Television broadcast stations licensed to other designated communities of the same major television market (Example: Cincinnati, Ohio-Newport, Ky., television market);

(5) Commercial television broadcast stations that are significantly viewed in the community of the system See § 76.54.

(b) Any such cable television system may carry sufficient additional signals so that, including the signals required to be carried pursuant to paragraph (a) of this section, it can provide the signals of a full network station of each of the major national television networks, and of three independent television stations: *Provided, however,* That in determining how many additional signals may be carried, any authorized but not operating television broadcast station that, if operational, would be required to be carried pursuant to paragraph (a)(1) of this section, shall be considered to be operational for a period terminating 18 months after grant of its initial construction permit. The following priorities are applicable to the additional television signals that may be carried:

(1) *Full network stations.* A cable television system may carry the nearest full network stations, or the nearest in-State full network stations;

NOTE: The Commission may waive the requirements of this subparagraph for good cause shown in a petition filed pursuant to § 76.7.

(2) *Independent stations.* (i) For the first and second additional signals, if any, a cable television system may carry the signals of any independent television station: *Provided, however,* That if signals of stations in the first 25 major television markets (see § 76.51(a)) are carried pursuant to this subparagraph, such signals shall be taken from one or both of the two closest such markets, where such signals are available. If a third additional signal may be carried, a system shall carry the signal of any independent UHF television station located within 200 air miles of the reference point for the community of the system (see § 76.53), or, if there is no such station, either the signal of any independent VHF television station located within 200 air miles of the reference point for the community of the system, or the signal of any independent UHF television station.

NOTE: It is not contemplated that waiver of the provisions of this subparagraph will be granted.

(ii) Whenever, pursuant to Subpart F of this part, a cable television system is required to delete a television program on a signal carried pursuant to subdivision (i) of this subparagraph or paragraph (c) of this section, or a program on such a signal is primarily of local interest to the distant community (e.g., a local news or public affairs program), such system may, consistent with the program exclusivity rules of Subpart F of this part, substitute a program from any other television broadcast station. A program substituted may be carried to its completion, and the cable system need not return to its regularly carried signal until it can do so without interrupting a program already in progress.

(c) After the service standards specified in paragraph (b) of this section have been satisfied, a cable television system may carry two additional independent television broadcast signals, chosen in accordance with the priorities specified in paragraph (b)(2) of this section: *Provided, however,* That the number of additional signals permitted under this paragraph shall be reduced by the number of signals added to the system pursuant to paragraph (b) of this section.

(d) In addition to the noncommercial educational television broadcast signals carried pursuant to paragraph (a) of this section, any such cable television system may carry the signals of any noncommercial educational stations that are operated by an agency of the State within which the system is located. Such system may also carry any other noncommercial educational signals, in the absence of objection filed pursuant to § 76.7 by any local noncommercial educational station or State or local educational television authority.

(e) In addition to the television broadcast signals carried pursuant to para-

graphs (a) through (d) of this section, any such cable television system may carry:

(1) Any television stations broadcasting predominantly in a non-English language; and

(2) Any television station broadcasting a network program that will not be carried by a station normally carried on the system. Carriage of such additional stations shall be only for the duration of the network programs not otherwise available, and shall not require prior Commission notification or approval in the certificating process.

(f) Where the community of a cable television system is wholly or partially within both one of the first 50 major television markets and another television market, the provisions of this section shall apply.

§ 76.63 Provisions for second 50 major television markets.

(a) A cable television system operating in a community located in whole or in part within one of the second 50 major television markets listed in § 76.51(b) shall carry television broadcast signals only in accordance with the provisions of § 76.61, except that in paragraph (b) of § 76.61, the number of additional independent television signals that may be carried is two (2).

(b) Where the community of a cable television system is wholly or partially within both one of the second 50 major television markets and one of the first 50 major television markets, the carriage provisions for the first 50 major markets shall apply. Where the community of a system is wholly or partially within both one of the second 50 major television markets and a smaller television market, the provisions of this section shall apply.

§ 76.65 Grandfathering provisions.

The provisions of §§ 76.57, 76.59, 76.61, and 76.63 shall not be deemed to require the deletion of any television broadcast or translator signals which a cable television system was authorized to carry or was lawfully carrying prior to March 31, 1972: *Provided, however,* That if carriage of a signal has been limited by Commission order to discrete areas of a community, any expansion of service will be subject to the appropriate provisions of this subpart. If a cable television system in a community is authorized to carry signals, either by virtue of specific Commission authorization or otherwise, any other cable television system already operating or subsequently commencing operations in the same community may carry the same signals. (Any such new system shall, before instituting service, obtain a certificate of compliance, pursuant to § 76.11.)

Subpart E—[Reserved]

Subpart F—Program Exclusivity

§ 76.91 Stations entitled to network program exclusivity.

(a) Any cable television system operating in a community, in whole or in part, within the Grade B contour of any television broadcast station, or within the community of a 100-watt or higher power television translator station, and that carries the signal of such station shall, on request of the station licensee or permittee, maintain the station's exclusivity as an outlet for network programing against lower priority duplicating signals, but not against signals of equal priority, in the manner and to the extent specified in §§ 76.93 and 76.95.

(b) For purposes of this section, the order of priority of television signals carried by a cable television system is as follows:

(1) First, all television broadcast stations within whose principal community contours the community of the system is located, in whole or in part;

(2) Second, all television broadcast stations within whose Grade A contours the community of the system is located, in whole or in part;

(3) Third, all television broadcast stations within whose Grade B contours the community of the system is located, in whole or in part;

(4) Fourth, all television translator stations with 100 watts or higher power, licensed to the community of the system.

(c) If the signal of a television broadcast station licensed to a community in a smaller television market is carried by a cable television system, pursuant to § 76.57(a)(4), such signal shall, on request, be afforded network program exclusivity. This provision shall not be applicable to any signal authorized or lawfully carried by a cable television system prior to March 31, 1972.

§ 76.93 Extent of protection.

(a) Where the network programming of a television station is entitled to program exclusivity, the cable television system shall, on request of the station licensee or permittee, refrain from simultaneously duplicating any network program broadcast by such station, if the cable operator has received notification from the requesting station of the date and time of its broadcast of the program and the date and time of any broadcast to be deleted, as soon as possible and in any event no later than 48 hours prior to the broadcast to be deleted. On request of the cable system, such notice shall be given no later than the Monday preceding the calendar week (Sunday–Saturday) during which exclusivity is sought.

(b) Notwithstanding the provisions of paragraph (a) of this section, on request of a television station licensed to a community in the Mountain Standard Time Zone that is not one of the designated communities in the first 50 major television markets, a cable television system shall refrain from duplicating any network program broadcast by such station on the same day as its broadcast by the station. Where a cable system is required to provide same-day program exclusivity, the following provisions shall be applicable:

(1) A cable television system need not delete reception of a network program if, in so doing, it would leave available for reception by subscribers, at any time, less than the programs of two networks (including those broadcast by any stations whose signals are being carried and whose program exclusivity is being protected pursuant to the requirements of this section);

(2) A system need not delete reception of a network program which is scheduled by the network between the hours of 6 and 11 p.m., eastern time, but is broadcast by the station requesting deletion, in whole or in part, outside of the period which would normally be con-

sidered prime time for network programing in the time zone involved.

§ 76.95 Exceptions.

Notwithstanding the requirements of § 76.93:

(a) A cable television system need not delete reception of any program which would be carried on the system in color but will be broadcast in black and white by the station requesting deletion.

(b) The Commission will give full effect to private agreements between operators of cable television systems and local television stations which provide for a type or degree of network exclusivity which differs from the requirements of §§ 76.91 and 76.93.

§ 76.97 Waiver petitions.

Where a petition for waiver of the provisions of §§ 76.91 and 76.93 is filed within fifteen (15) days after a request for program exclusivity is received by the operator of a cable television system, such system need not provide program exclusivity pending the Commission's ruling on the petition or on the question of temporary relief pending further proceedings.

§ 76.99 Grandfathering.

The provisions of §§ 76.91, 76.93, 76.151, and 76.153 shall not be deemed to deprive a television station whose signal was carried by a cable television system prior to March 31, 1972, of the nonnetwork program exclusivity rights that such station had on March 30, 1972; *Provided, however*, That such exclusivity rights shall extend only to simultaneous duplication of programing by lower priority television stations, unless the station whose exclusivity rights are at issue is entitled to same-day network program exclusivity pursuant to § 76.93(b), in which case that station shall also be entitled to continued same-day nonnetwork program exclusivity.

§ 76.151 Syndicated program exclusivity; extent of protection.

Upon receiving notification pursuant to § 76.155:

(a) No cable television system, operating in a community in whole or in part within one of the first 50 major television markets, shall carry a syndicated program, pursuant to § 76.61 (b), (c), (d), or (e), for a period of 1 year from the date that program is first licensed or sold as a syndicated program to a television station in the United States for television broadcast exhibition;

(b) No cable television system, operating in a community in whole or in part within a major television market, shall carry a syndicated program, pursuant to §§ 76.61 (b), (c), (d), or (e), or 76.63 (a) (as it refers to § 76.61 (b), (c), (d), or (e)), while a commercial television station licensed to a designated community in that market has exclusive broadcast exhibition rights (both over-the-air and by cable) to that program: *Provided, however*, That if a commercial station licensed to a designated community in one of the second 50 major television markets has such exclusive rights, a cable television system located in whole or in part within the market of such station may carry such syndicated program in the following circumstances:

(1) If the program is carried by the cable television system in prime time and will not also be broadcast by a commercial market station in prime time during the period for which there is exclusivity for the program;

(2) For off-network series programs:

(i) Prior to the first nonnetwork broadcast in the market of an episode in the series;

(ii) After a nonnetwork first-run of the series in the market or after 1 year from the date of the first nonnetwork broadcast in the market of an episode in the series, whichever occurs first;

(3) For first-run series programs:

(i) Prior to the first broadcast in the market of an episode in the series;

(ii) After two (2) years from the first broadcast in the market of an episode in the series;

(4) For first-run, nonseries programs:

(i) Prior to the date the program is

available for broadcast in the market under the provision of any contract or license of a television broadcast station in the market;

(ii) After two (2) years from the date of such first availability;

(5) For feature films:

(i) Prior to the date such film is available for nonnetwork broadcast in the market under the provisions of any contract or license of a television broadcast station in the market;

(ii) Two (2) years after the date of such first availability;

(6) For other programs: 1 day after the first nonnetwork broadcast in the market or 1 year from the date of purchase of the program for nonnetwork broadcast in the market, whichever occurs first.

NOTE: For purposes of § 76.151, a series will be treated as a unit, that is:

(i) No episode of a series (including an episode in a different package of programs in the same series) may be carried by a cable television system, pursuant to §§ 76.61 (b), (c), (d), or (e) or 76.63(a) (as it refers to § 76.61 (b), (c), (d), or (e)) while any episodes of the series are subject to exclusivity protection.

(ii) In the second 50 major television markets, no exclusivity will be afforded a different package of programs in the same series after the initial exclusivity period has terminated.

NOTE 2: As used in this section, the phrase "broadcast in the market" or "broadcast by a market station" refers to a broadcast by a television station licensed to a designated community in the market.

§ 76.153 Parties entitled to exclusivity.

(a) Copyright holders of syndicated programs shall be entitled to the exclusivity provided by § 76.151(a). In order to receive such exclusivity, the copyright holder shall notify each cable system of the exclusivity sought in accordance with the requirements of § 76.155.

(b) Television broadcast stations licensed to designated communities in the major television markets shall be entitled to the exclusivity provided by § 76.151 (b). In order to receive such exclusivity, such television stations shall notify each cable system of the exclusivity sought in accordance with the requirements of § 76.155.

(c) In order to be entitled to exclusivity for a program under § 76.151(b), a television station must have an exclusive right to broadcast that program against all other television stations licensed to the same designated community and against broadcast signal cable carriage of that program in the cable system community: *Provided, however*, That such exclusivity will not be recognized in a designated community of another major television market unless such community is wholly within the television market of the station seeking exclusivity. In hyphenated markets, exclusivity will be recognized beyond the specified zone of a station only to the extent the station has exclusivity against other stations in the designated communities of the market. In such instances, exclusivity to the extent a station has obtained it will be recognized within the specified zones of such other stations. It shall be presumed that broadcast rights acquired prior to March 31, 1972, are exclusive for the specified zones of all stations in the market in which the station is located.

§ 76.155 Notification.

(a) Syndicated program exclusivity notifications shall include the following information:

(1) For purposes of § 76.151(a):

(i) The name and address of the copyright holder requesting exclusivity;

(ii) The name of the program or series for which exclusivity is sought;

(iii) The date of first sale or license of the program for television broadcast as a syndicated program in the United States.

(2) For purposes of § 76.151(b):

(i) The name and address of the television broadcast station requesting exclusivity;

(ii) The name of the program or series for which exclusivity is sought;

(iii) The dates on which exclusivity is to commence and terminate;

(iv) As to programs to be deleted from signals regularly carried by the system pursuant to §§ 76.61 (b), (c), (d), or (e) and 76.63(a) (as it refers to § 76.61 (b), (c), (d), or (e)): the name of the program; the call letters of the station from which the deletion is to be made; and the date, time, and duration of the deletion. Information, once supplied pursuant to subparagraphs (2) (i), (ii), (iii), or (3) of this paragraph, need not be repeated in any notification supplying the information required by this subparagraph.

(3) For purposes of § 76.151(b) (as it relates to television stations licensed to designated communities in the second 50 major television markets), the following information shall be supplied in addition to that required by subparagraph (2) of this paragraph:

(i) Whether the program will be broadcast in prime time by the station requesting exclusivity during the period of protection provided in § 76.151(b);

(ii) The specific rule pursuant to which exclusivity is requested (e.g., § 76.151 (b)(2)—off-network series, § 76.151(b) (3)—first-run series);

(iii) For off-network series programs, the number of showings contracted for, including the number of repeat presentations, if any, and the date when the first run is to end.

(b) Subject to the provisions of paragraph (c) of this section, notifications given pursuant to § 76.151 must be received no later than the Monday preceding the calendar week (Sunday-Saturday) during which exclusivity is sought.

(c) Direct notice of a change in the schedule of a television station against which exclusivity is sought, given to a cable television system by a television station seeking exclusivity, shall, if given more than 36 hours prior to the time a deletion is to be made, supersede prior notifications containing the information required by paragraph (a) of this section and any information otherwise relied on pursuant to paragraph (d) of this section.

(d) In determining which programs must be deleted from a television signal when such information is not required to be provided pursuant to paragraph (a) of this section, a cable television system may rely on information from any of the following sources published or made available during the week the deletion is to be made or during the prior week:

(i) Newspapers or journals of general circulation in the service area of a television station whose programs may be subject to deletion;

(ii) A television station whose programs may be subject to deletion;

(iii) Any television station requesting exclusivity.

§ 76.157 Exclusivity contracts.

With respect to each program as to which a television broadcast station licensee or permittee requests exclusivity pursuant to § 76.151, such licensee or permittee shall maintain in its public file an exact copy of those portions of the exclusivity contract, such portions to be signed by both the copyright holder and the licensee or permittee, setting forth in full the provisions pertinent to the duration, nature, and extent of the exclusivity terms concerning broadcast signal exhibition (whether over-the-air or by cable) to which the parties have agreed.

§ 76.159 Grandfathering.

The provisions of § 76.151 shall not be deemed to require a cable television system to delete programing from any signal that was carried prior to March 31, 1972, or that any other cable television system in the same community was carrying prior to March 31, 1972: *Provided, however*, That if carriage of a signal has been limited by Commission order to discrete areas of a community, any expansion of service will be subject to the appropriate provisions of the subpart.

Subpart G—Cablecasting

§ 76.201 Origination cablecasting in conjunction with carriage of broadcast signals.

(a) No cable television system having 3,500 or more subscribers shall carry the signal of any television broadcast station unless the system also operates to a significant extent as a local outlet by origination cablecasting and has available facilities for local production and presentation of programs other than automated services. Such origination cablecasting shall be limited to one or more designated channels which may be used for no other cablecasting purpose.

(b) No cable television system located outside of all major television markets shall enter into any contract, arrangement, or lease for use of its cablecasting facilities which prevents or inhibits the use of such facilities for a substantial portion of time (including the time period 6–11 p.m.) for local programming designed to inform the public on controversial issues of public importance.

(c) No cable television system shall carry the signal of any television broadcast station if the system engages in origination cablecasting, either voluntarily or pursuant to paragraph (a) of this section, unless such cablecasting is conducted in accordance with the provisions of §§ 76.205, 76.209, 76.213, 76.215, 76.217, 76.221, and 76.225.

§ 76.205 Origination cablecasts by candidates for public office.

(a) *General requirements.* If a cable television system shall permit any legally qualified candidate for public office to use its origination channel(s) and facilities therefor, it shall afford equal opportunities to all other such candidates for that office: *Provided, however,* That such system shall have no power of censorship over the material cablecast by any such candidate; *And provided, further,* That an appearance by a legally qualified candidate on any:

(1) Bona fide newscast,

(2) Bona fide news interview,

(3) Bona fide news documentary (if the appearance of the candidate is incidental to the presentation of the subject or subjects covered by the news documentary), or

(4) On-the-spot coverage of bona fide news events (including but not limited to political conventions and activities incidental thereto),

shall not be deemed to be use of the facilities of the system within the meaning of this paragraph.

NOTE: The Fairness Doctrine is applicable to these exempt categories. See § 76.209.

(b) *Rates and practices.* (1) The rates, if any, charged all such candidates for the same office shall be uniform, shall not be rebated by any means direct or indirect, and shall not exceed the charges made for comparable origination use of such facilities for other purposes.

(2) In making facilities available to candidates for public office no cable television system shall make any discrimination between candidates in charges, practices, regulations, facilities, or services for or in connection with the service rendered, or make or give any preference to any candidate for public office or subject any such candidate to any prejudice or disadvantage; nor shall any cable television system make any contract or other agreement which shall have the effect of permitting any legally qualified candidate for any public office to cablecast to the exclusion of other legally qualified candidates for the same public office.

(c) *Records, inspections.* Every cable television system shall keep and permit public inspection of a complete record of all requests for origination cablecasting time made by or on behalf of candidates for public office, together with an appropriate notation showing the disposition made by the system of such requests, the charges made, if any, and the length and time of cablecast, if the request is granted. Such records shall be retained for a period of 2 years.

(d) *Time of request.* A request for equal opportunities for use of the origination channel(s) must be submitted to the cable television system within one (1) week of the day on which the first prior use, giving rise to the right of equal opportunities, occurred: *Provided, however,* That where a person was not a candidate at the time of such first prior use, he shall submit his request within one (1) week of the first subsequent use after he has become a legally qualified candidate for the office in question.

(e) *Burden of proof.* A candidate requesting such equal opportunities of the cable television system, or complaining of noncompliance to the Commission, shall have the burden of proving that he and his opponent are legally qualified candidates for the same public office.

§ 76.209 Fairness doctrine; personal attacks; political editorials.

(a) A cable television system engaging in origination cablecasting shall afford reasonable opportunity for the discussion of conflicting views on issues of public importance.

NOTE: See public notice, "Applicability of the Fairness Doctrine in the Handling of Controversial Issues of Public Importance," 29 F.R. 10415.

(b) When, during such origination cablecasting, an attack is made upon the honesty, character, integrity, or like personal qualities of an identified person or group, the cable television system shall, within a reasonable time and in no event later than one (1) week after the attack, transmit to the person or group attacked: (1) Notification of the date, time, and identification of the cablecast; (2) a script or tape (or an accurate summary if a script or tape is not available) of the attack; and (3) an offer of a reasonable opportunity to respond over the system's facilities.

(c) The provisions of paragraph (b) of this section shall not be applicable: (1) To attacks on foreign groups or foreign public figures; (2) to personal attacks which are made by legally qualified candidates, their authorized spokesmen, or those associated with them in the campaign, on other such candidates, their authorized spokesmen, or persons associated with the candidates in the campaign; and (3) to bona fide newscasts, bona fide news interviews, and on-the-spot coverage of a bona fide news event (including commentary or analysis contained in the foregoing programs, but the provisions of paragraph (b) of this section shall be applicable to editorials of the cable television system).

(d) Where a cable television system, in an editorial, (1) endorses or (2) opposes a legally qualified candidate or candidates, the system shall, within 24 hours after the editorial, transmit to respectively (i) the other qualified candidate or candidates for the same office, or (ii) the candidate opposed in the editorial, (*a*) notification of the date, time, and channel of the editorial; (*b*) a script or tape of the editorial; and (*c*) an offer of a reasonable opportunity for a candidate or a spokesman of the candidate to respond over the system's facilities: *Provided, however,* That where such editorials are cablecast within 72 hours prior to the day of the election, the system shall comply with the provisions of this paragraph sufficiently far in advance of the broadcast to enable the candidate or candidates to have a reasonable opportunity to prepare a response and to present it in a timely fashion.

§ 76.213 Lotteries.

(a) No cable television system when engaged in origination cablecasting shall transmit or permit to be transmitted on the origination cablecasting channel or channels any advertisement of or information concerning any lottery, gift enterprise, or similar scheme, offering prizes dependent in whole or in part upon lot or chance, or any list of the prizes drawn or awarded by means of any such lottery, gift enterprise, or scheme, whether said list contains any part or all of such prizes.

(b) The determination whether a particular program comes within the pro-

visions of paragraph (a) of this section depends on the facts of each case. However, the Commission will in any event consider that a program comes within the provisions of paragraph (a) of this section if in connection with such program a prize consisting of money or thing of value is awarded to any person whose selection is dependent in whole or in part upon lot or chance, if as a condition of winning or competing for such prize, such winner or winners are required to furnish any money or thing of value or are required to have in their possession any product sold, manufactured, furnished, or distributed by a sponsor of a program cablecast on the system in question.

§ 76.215 Obscenity.

No cable television system when engaged in origination cablecasting shall transmit or permit to be transmitted on the origination cablecasting channel or channels material that is obscene or indecent.

§ 76.217 Advertising.

A cable television system engaged in origination cablecast programming may present advertising material at the beginning and conclusion of each such program and at natural intermissions or breaks within a cablecast: *Provided, however,* That the system itself does not interrupt the presentation of program material in order to intersperse advertising: *And provided, further,* That advertising material is not presented on or in connection with origination cablecasting in any other manner.

NOTE: The term "natural intermissions or breaks within a cablecast" means any natural intermission in the program material which is beyond the control of the cable television operator, such as time-out in a sporting event, an intermission in a concert or dramatic performance, a recess in a city council meeting, an intermission in a long motion picture which was present at the time of theatre exhibition, etc.

§ 76.221 Sponsorship identification.

(a) When a cable television system engaged in origination cablecasting presents any matter for which money, services, or other valuable consideration is either directly or indirectly paid or promised to, or charged or received by, such system, the system shall make an announcement that such matter is sponsored, paid for, or furnished, either in whole or in part, and by whom or on whose behalf such consideration was supplied: *Provided, however,* That "service or other valuable consideration" shall not include any service or property furnished without charge or at a nominal charge for use on, or in connection with, such cablecasting unless it is so furnished as consideration for an identification in a cablecast of any person, product, service, trademark, or brand name beyond an identification which is reasonably related to the use of such service or property on the cablecast.

(b) Each system engaged in origination cablecasting shall exercise reasonable diligence to obtain from its employees, and from other persons with whom it deals directly in connection with any program matter for origination cablecasting, information to enable it to make the announcement required by this section.

(c) In the case of any political program or any program involving the discussion of public controversial issues for which any films, records, transcriptions, talent, script, or other material or services of any kind are furnished, either directly or indirectly, to a cable television system as an inducement to the origination cablecasting of such program, an announcement to this effect shall be made at the beginning and conclusion of such program: *Provided, however,* That only one such announcement need be made in the case of any such program of five (5) minutes' duration or less, either at the beginning or conclusion of the program.

(d) The announcements required by this section are waived with respect to feature motion picture films produced initially and primarily for theater exhibition.

§ 76.225 Per-program or per-channel charges for reception of cablecasts.

(a) Origination or access cablecasting operations for which a per-program or per-channel charge is made shall comply with the following requirements:

(1) Feature films shall not be cablecast which have had general release in theaters anywhere in the United States more than two (2) years prior to their cablecast: *Provided, however,* That during 1 week of each calendar month one feature film the general release of which occurred more than ten (10) years previously may be cablecast, and more than a single showing of such film may be made during that week: *Provided, further,* That feature films the general release of which occurred between two (2) and ten (10) years before proposed cablecast may be cablecast upon a convincing showing to the Commisison that bona fide attempt has been made to sell the films for conventional television broadcasting and that they have been refused, or that the owner of the broadcast rights to the films will not permit them to be televised on conventional television because he has been unable to work out satisfactory arrangements concerning editing for presentation thereon, or perhaps because he intends never to show them on conventional television since to do so might impair their repetitive box office potential in the future.

NOTE: As used in this subparagraph, "general release" means the first-run showing of a feature film in a theatre or theatres in an area, on a nonreserved-seat basis, with continuous performances. For first-run showing of feature films on a nonreserved-seat basis which are not considered to be "general release" for purposes of this subparagraph, see note 56 in Fourth Report and Order in Docket No. 11279, 15 FCC 2d 466.

(2) Sports events shall not be cablecast which have been televised live on a nonsubscription, regular basis in the community during the two (2) years preceding their proposed cablecast: *Provided, however,* That if the last regular occurrence of a specific event (e.g., summer Olympic games) was more than two (2) years before proposed showing on cable television in a community and the event was at that time televised on conventional television in that community, it shall not be cablecast.

NOTE 1: In determining whether a sports event has been televised in a community on a nonsubscription basis, only commercial television broadcast stations which place a Grade A contour over the entire community will be considered. Such stations need not necessarily be licensed to serve that community.

NOTE 2: The manner in which this subparagraph will be administered and in which "sports," "sports events," and "televised live on a nonsubscription regular basis" will be construed is explained in paragraphs 288–305 in Fourth Report and Order in Docket No. 11279, 15 FCC 2d 466.

(3) No series type of program with interconnected plot or substantially the same cast of principal characters shall be cablecast.

(4) Not more than 90 percent of the total cablecast programing hours shall consist of feature films and sports events combined. The percentage calculations may be made on a yearly basis, but, absent a showing of good cause, the percentage of such programing hours may not exceed 95 percent of the total cablecast programing hours in any calendar month.

(5) No commercial advertising announcements shall be carried on such channels during such operations except, before and after such programs, for promotion of other programs for which a per-program or per-channel charge is made.

§ 76.251 Minimum channel capacity; access channels.

(a) No cable television system operating in a community located in whole or in part within a major television market, as defined in § 76.5, shall carry the signal of any television broadcast station unless the system also complies with the following requirements concerning the availability and administration of access channels:

(1) *Minimum channel capacity.* Each such system shall have at least 120 MHz of bandwidth (the equivalent of 20 television broadcast channels) available for

immediate or potential use for the totality of cable services to be offered;

(2) *Equivalent amount of bandwidth.* For each Class I cable channel that is utilized, such system shall be capable of providing an additional channel, 6 MHz in width, suitable for transmission of Class II or Class III signals (see § 76.5 for cable channel definitions);

(3) *Two-way communications.* Each such system shall maintain a plant having technical capacity for nonvoice return communications;

(4) *Public access channel.* Each such system shall maintain at least one specially designated, noncommercial public access channel available on a first-come, nondiscriminatory basis. The system shall maintain and have available for public use at least the minimal equipment and facilities necessary for the production of programing for such a channel. See also § 76.201;

(5) *Education access channel.* Each such system shall maintain at least one specially designated channel for use by local educational authorities;

(6) *Local government access channel.* Each such system shall maintain at least one specially designated channel for local government uses;

(7) *Leased access channels.* Having satisfied the origination cablecasting requirements of § 76.201, and the requirements of subparagraphs (4), (5), and (6) of this paragraph for specially designated access channels, such system shall offer other portions of its nonbroadcast bandwidth, including unused portions of the specially designated channels, for leased access services. However, these leased channel operations shall be undertaken with the express understanding that they are subject to displacement if there is a demand to use the channels for their specially designated purposes. On at least one of the leased channels, priority shall be given part-time users;

(8) *Expansion of access channel capacity.* Whenever all of the channels described in subparagraphs (4) through (7) of this paragraph are in use during 80 percent of the weekdays (Monday-Friday) for 80 percent of the time during any consecutive 3-hour period for 6 consecutive weeks, such system shall have 6 months in which to make a new channel available for any or all of the above-described purposes;

(9) *Program content control.* Each such system shall exercise no control over program content on any of the channels described in subparagraphs (4) through (7) of this paragraph; however, this limitation shall not prevent it from taking appropriate steps to insure compliance with the operating rules described in subparagraph (11) of this paragraph;

(10) *Assessment of costs.* (i) From the commencement of cable television service in the community of such system until five (5) years after completion of the system's basic trunk line, the channels described in subparagraphs (5) and (6) of this paragraph shall be made available without charge.

(ii) One of the public access channels described in subparagraph (4) of this paragraph shall always be made available without charge, except that production costs may be assessed for live studio presentations exceeding 5 minutes. Such production costs and any fees for use of other public access channels shall be consistent with the goal of affording the public a low-cost means of television access;

(11) *Operating rules.* (i) For the public access channel(s), such system shall establish rules requiring first-come nondiscriminatory access; prohibiting the presentation of: Any advertising material designed to promote the sale of commercial products or services (including advertising by or on behalf of candidates for public office); lottery information; and obscene or indecent matter (modeled after the prohibitions in §§ 76.213 and 76.215, respectively); and permitting public inspection of a compelte record of the names and adresses of all persons or groups requesting access time. Such a record shall be retained for a period of 2 years.

(ii) For the educational access channel(s), such system shall establish rules prohibiting the presentation of: Any advertising material designed to promote the sale of commercial products or services (including advertising by or on behalf of candidates for public office); lottery information; and obscene or indecent matter (modeled after the prohibitions in §§ 76.213 and 76.215, respectively) and permitting public inspection of a complete record of the names and addresses of all persons or groups requesting access time. Such a record shall be retained for a period of 2 years.

(iii) For the leased channel(s), such system shall establish rules requiring first-come, nondiscriminatory access; prohibiting the presentation of lottery information and obscene or indecent matter (modeled after the prohibitions in §§ 76.213 and 76.215, respectively); requiring sponsorship identification (see § 76.221); specifying an appropriate rate schedule; and permitting public inspection of a complete record of the names and addresses of all persons or groups requesting time. Such a record shall be retained for a period of 2 years.

(iv) The operating rules governing public access, educational, and leased channels shall be filed with the Commission within 90 days after a system first activates any such channels, and shall be available for public inspection at the system's offices. Except on specific authorization, or with respect to the operation of the local government access channel, no local entity shall prescribe any other rules concerning the number or manner of operation of access channels; however, franchise specifications concerning the number of such channels for systems in operation prior to March 31, 1972, shall continue in effect.

(b) No cable television system operating in a community located wholly outside of all major television markets shall be required by a local entity to exceed the provisions concerning the availability and administration of access channels contained in paragraph (a) of this section. If a system provides any access programing, it shall comply with paragraph (a) (9), (10), and (11) of this section.

(c) The provisions of this section shall apply to all cable television systems that commence operations on or after March 31, 1972, in a community located in whole or in part within a major television market. Systems that commenced operations prior to March 31, 1972, shall comply on or before March 31, 1977: *Provided, however,* That, if such systems begin to provide any of the access services described above at an earlier date, they shall comply with paragraph (a)(9), (10), and (11) of this section at that time: *And provided, further,* That if such systems receive certificates of compliance to add television signals to their operations at an earlier date, pursuant to § 76.61(b) or (c), or § 76.63(a) (as it relates to § 76.61(b) or (c)), for each such signal added, such systems shall provide one (1) access channel in the following order of priority—(1) public access, (2) education access, (3) local government access, and (4) leased access—and shall comply with the appropriate requirements of paragraphs (a)(4)–(7) and (a)(9)–(11) of this section with respect thereto.

Subpart H—General Operating Requirements

§ 76.301 Copies of rules.

The operator of a cable television system shall have a current copy of Part 76, and is expected to be familiar with the rules governing cable television systems. Copies of the Commission's rules may be obtained from the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402, at nominal cost.

§ 76.305 Logging and recordkeeping requirements.

(a) *Carriage of certain television signals.* (1) A cable television system operating in a community located in whole or in part within a major television market shall keep and permit public inspection of a record of all television signals carried pursuant to §§ 76.61 (b), (c), (d), or (e) or 76.63(a) (as it refers to § 76.61 (b), (c), (d), or (e)). Such record shall include the call letters and location of each such station whose signals are carried, the date and specific starting and ending time of such carriage, and the names of the programs scheduled to be shown. This record shall be retained for a period of 2 years.

(2) This paragraph shall be applicable only to television signals whose carriage commenced on or after March 31, 1972.

(b) *Origination cablecasts by candidates for public office.* See § 76.205(c).

(c) *Public access channels.* See § 76.251 (a)(11).

(d) *Educational access channels.* See § 76.251(a)(11).

(e) *Leased access channels.* See § 76.-251(a)(11).

(f) *Equal employment opportunities.* See § 76.311(f).

§ 76.311 Equal employment opportunities.

The following provisions apply to all operators of cable television systems, both in that capacity and as licensees or permittees of cable television relay stations. Where a cable system or a headquarters office has employees whose duties are related to the operation of a cable television relay station, these employees shall be considered employees of the cable system or headquarters office employment unit for purposes of this section.

(a) *General policy.* Equal opportunity in employment shall be afforded by all operators of cable television systems to all qualified persons, and no person shall be discriminated against in employment because of race, color, religion, national origin, or sex.

(b) *Equal employment opportunity program.* (1) Each cable television system shall establish, maintain, and carry out a positive continuing program of specific practices designed to assure equal opportunity in every aspect of system employment policy and practice.

(2) Under the terms of its program, a system shall:

(i) Define the responsibility of each level of management to insure a positive application and vigorous enforcement of the policy of equal opportunity, and establish a procedure to review and control managerial and supervisory performance;

(ii) Inform its employees and recognized employee organizations of the positive equal employment opportunity policy and program and enlist their cooperation;

(iii) Communicate the system's equal employment opportunity policy and program and its employment needs to sources of qualified applicants without regard to race, color, religion, national origin, or sex, and solicit their recruitment assistance on a continuing basis;

(iv) Conduct a continuing program to exclude every form of prejudice or discrimination based upon race, color, religion, national origin, or sex from the system's personnel policies and practices and working conditions;

(v) Conduct continuing review of job structure and employment practices and adopt positive recruitment, training, job design, and other measures needed to assure genuine equality of opportunity to

529-214 O - 74 - 9

participate fully in all organizational units, occupations, and levels of responsibility in the system.

(3) Where two or more cable television systems under common ownership or control are so interrelated in their management, operation, and utilization of employees as to constitute a single employment unit, the program shall be jointly established, maintained, and carried out by them. (Under other circumstances, the term "single employment unit" refers to an individual cable television system or to a headquarters office.)

(c) *Additional information to be furnished to the Commission*—(1) *Equal employment programs to be filed by operators of systems.* (i) The operator of each cable television system shall file a statement of its equal employment opportunity program not later than June 30, 1972, indicating specific practices to be followed in order to assure equal employment opportunity for females, Negroes, Orientals, American Indians, and Spanish-surnamed Americans in such aspects of employment practices as recruitment, selection, training, placement, promotion, pay, working conditions, demotion, layoff, and termination.

(*a*) Any changes or amendment to existing programs shall be filed with the Commission on or before May 31 of each year thereafter.

(*b*) If the system (*1*) has fewer than five full-time employees, and (*2*) does not (within the meaning of paragraph (b)(3) of this section together with other cable television systems constitute a single employment unit with an aggregate total of five or more full-time employees, an equal employment opportunity program statement need not be filed for the employment unit which consists of or includes the system.

(*c*) (*1*) Where, pursuant to paragraph (b)(3) of this section, a program is jointly established by two or more cable systems with an aggregate total of 5 or more full-time employees, a multiple cable operator shall file a combined statement. (*2*) A multiple cable operator shall file a separate equal employment opportunity program statement for each headquarters office if that office has five or more full-time employees, and its work is primarily related to the operation of more than one cable television system under common ownership or control.

(*d*) If, pursuant to (*b*) of this subdivision or § 76.13(a)(8), a cable operator has been exempted from the requirement that it file an equal employment opportunity program statement, but has failed to satisfy the conditions of that exemption at any time during the first 3 months of a calendar year, it shall file the statement on or before May 31 of that year.

(2) *Contents of the equal employment program statement.* The program should reasonably address itself to such specific areas as set forth below, to the extent that they are appropriate in terms of employment unit size, location, etc.

(i) *To assure nondiscrimination in employment.* (*a*) Posting notices in the cable operator's offices and places of employment informing employees, and applicants for employment, of their equal employment opportunity rights, and their right to notify the Equal Employment Opportunity Commission, the Federal Communications Commission, or other appropriate agency if they believe they have been discriminated against. Where a significant percentage of employees, employment applicants, or residents of the community of a cable television system are Spanish-surnamed Americans, such notice should be posted in Spanish and English. Similar use should be made of other languages in such posted equal employment opportunity notices, where appropriate;

(*b*) Placing a notice in bold type on the employment application informing prospective employees that discrimination because of sex, race, color, religion, or national origin is prohibited and that they may notify the Equal Employment Opportunity Commission, the Federal Communications Commission, or other ap-

propriate agency if they believe they have been discriminated against;

(c) Placing employment advertisements in media that have significant circulation among minority-group people in the recruiting area;

(d) Recruiting through schools and colleges with significant minority-group enrollments;

(e) Maintaining systematic contacts with minority and human relations organizations, leaders, and spokesmen to encourage referral of qualified minority or female applicants;

(f) Encouraging present employees to refer minority or female applicants;

(g) Making known to the appropriate recruitment sources in the employer's immediate area that qualified minority members and females are being sought for consideration whenever the cable operator hires.

(ii) *To assure nondiscrimination in selection and hiring.* (a) Instructing personally those on the staff of the system who make hiring decisions that all applicants for all jobs are to be considered without discrimination;

(b) Where union agreements exist, cooperating with the union or unions in the development of programs to assure qualified minority persons or females of equal opportunity for employment, and including an effective nondiscrimination clause in new or renegotiated union agreements;

(c) Avoiding use of selection techniques or tests that have the effect of discriminating against minority groups or females.

(iii) *To assure nondiscriminatory placement and promotion.* (a) Instructing personally those of the system's staff who makes decisions on placement and promotion that minority employees and females are to be considered without discrimination, and that job areas in which there is little or no minority or female representation should be reviewed to determine whether this results from discrimination;

(b) Giving minority groups and female employees equal opportunity for positions which lead to higher positions. Inquiring as to the interest and skills of all lower paid employees with respect to any of the higher paid positions, followed by assistance, counselling, and effective measures to enable employees with interest and potential to qualify themselves for such positions;

(c) Reviewing seniority practices to insure that such practices are nondiscriminatory and do not have a discriminatory effect;

(d) Avoiding use of selection techniques or tests that have the effect of discriminating against minority groups or females.

(iv) *To assure nondiscrimination in other areas of employment practices.* (a) Examining rates of pay and fringe benefits for present employees with equivalent duties, and adjusting any inequities found;

(b) Providing opportunity to perform overtime work on a basis that does not discriminate against qualified minority group or female employees.

(d) *Report of complaints filed against operators of systems.* (1) All operators of cable television systems shall submit an annual report to the Commission no later than May 31 of each year indicating whether any complaints regarding violations by the operator of equal employment provisions of Federal, State, territorial, or local law have been filed during the preceding calendar year before any body having competent jurisdiction.

(i) The report shall state with respect to each such complaint: The parties involved, the date filed, the courts or agencies before which the matter has been heard, the appropriate file number (if any), and the respective disposition or current status of the complaint.

(ii) Any cable operator who has filed such information with the Equal Employment Opportunity Commission need not do so with the Federal Communications Commission, if such previous filing is indicated.

(e) *Report of annual employment.* (1) Each operator of a cable television system with five or more full-time employees (including those whose duties are related to the operation of a cable television relay station) shall file with the Commission, on or before May 31 of each year, on FCC Form 395, an annual employment report.

(2) (i) Where pursuant to paragraph (b) (3) of this section, an equal employment opportunity program is jointly established by two or more cable television systems with an aggregate total of five or more full-time employees, a combined (single employment unit) annual employment report shall be filed.

(ii) A multiple cable operator shall file a separate annual employment report for each headquarters office if that office has five or more full-time employees, and its work is primarily related to the operation of more than one cable television system under common ownership or control.

(iii) Where, pursuant to subdivisions (i) and (ii) of this subparagraph, if more than one annual employment report is filed with respect to (*a*) cable television systems under common ownership or control, or (*b*) headquarters offices performing work related to such systems, a multiple cable operator shall also file a consolidated report, covering all system and headquarters office employees included in those reports.

(3) The data contained in each annual employment report required by subparagraphs (1) and (2) (i) and (ii) of this paragraph shall reflect the figures from any one payroll period in January, February, or March of the year during which the report is filed. The same payroll period should be used in each year's annual employment report.

(4) Annual employment reports required by this paragraph shall be filed on or before May 31 of each year.

(f) *Records available to the public*—(1) *Commission records.* A copy of every annual employment report, equal employment opportunity program, and reports on complaints regarding violation of equal employment provisions of Federal, State, territorial, or local law, and copies of all exhibits, letters, and other documents filed as part thereof, all amendments thereto, all correspondence between the cable operator and the Commission pertaining to the reports after they have been filed and all documents incorporated therein by reference, are open for public inspection at the offices of the Commission.

(2) *Records to be maintained locally for public inspection by operators*—(i) *Records to be maintained.* Each operator of a cable television system required to file annual employment reports, equal employment opportunity programs, and annual reports on complaints regarding violations of equal employment provisions of Federal, State, territorial, or local law shall maintain, for public inspection, a file containing a copy of each such report and copies of all exhibits, letters, and other documents filed as part thereto, all correspondence between the cable operator and the Commission pertaining to the reports after they have been filed and all documents incorporated therein by reference. An employer who is required to file a consolidated annual employment report shall maintain an adequately indexed consolidated equal employment opportunity files, containing copies of all the material included in the equal employment opportunity files of the headquarters offices and other employment units reported upon in his consolidated annual employment report.

(ii) *Period of retention.* The documents specified in subdivision (i) of this subparagraph shall be maintained for a period of 5 years.

(iii) *Where maintained.* The equal employment opportunity file for a system (or a single employment unit including that system) shall be maintained at the principal workplace of the employment unit, or at any accessible location (such as a public registry for documents or an attorney's office) in the principal community served by the employment unit. The

headquarters office equal employment opportunity file and the consolidated equal employment opportunity file shall be maintained (*a*) respectively, at the headquarters office and the principal office of the employer, or (*b*) at any accessible place (such as a public registry for documents or an attorney's office) in the community in which the office is located. The employer shall provide reasonable accommodations at these locations for undisturbed inspection of his equal employment opportunity records by members of the public during regular business hours.

Subpart I—Forms and Reports

§ 76.401 Annual report of cable television systems.

An "Annual Report of Cable Television Systems" (FCC Form 325) shall be filed with the Commission for each cable television system, as defined in § 76.5, on or before March 1 of each year, for the preceding calendar year.

§ 76.405 Cable television annual financial report.

A "Cable Television Annual Financial Report" (FCC Form 326) shall be filed with the Commission for each cable television system, as defined in § 76.5, on or before April 1 of each year, for the preceding calendar year: *Provided, however,* That a cable television system which commenced operations prior to December 1, 1971, may report on a fiscal year basis, in which case Form 326 shall be filed annually no more than ninety (90) days after the close of the system's fiscal year.

§ 76.406 Computation of cable television annual fee.

A "Computation of Cable Television Annual Fee" (FCC Form 326–A) shall be filed with the Commission for each cable television system, as defined in § 76.5, on or before April 1 of each year, for the preceding calendar year, to accompany payment of the cable television annual fee. See §§ 1.1101 and 1.1116.

§ 76.409 Annual employment report.

An "Annual Employment Report" (FCC Form 395) shall be filed with the Commission for each cable television system, as defined in § 76.5, on or before May 31 of each year, in accordance with the provisions of § 76.311.

§ 76.411 Annual report of complaints.

An "Annual Report of Complaints" shall be filed with the Commission for each cable television system, as defined in § 76.5, on or before May 31 of each year, in accordance with the provisions of § 76.311. This report indicates whether any complaints, alleging violations by the operator of equal employment provisions of Federal, State, territorial, or local law, have been filed during the previous calendar year before any body having competent jurisdiction.

[*§ 76.411 added new eff. 8–1–73; 111 (72)–2*]

Subpart J—Diversification of Control

§ 76.501 Cross-ownership.

(a) No cable television system (including all parties under common control) shall carry the signal of any television broadcast station if such system directly or indirectly owns, operates, controls, or has an interest in:

(1) A national television network (such as ABC, CBS, or NBC); or

(2) A television broadcast station whose predicted Grade B contour, computed in accordance with § 73.684 of this chapter, overlaps in whole or in part the service area of such system (i.e., the area within which the system is serving subscribers); or

(3) A television translator station licensed to the community of such system.

NOTE 1: The word "control" as used herein is not limited to majority stock ownership, but includes actual working control in whatever manner exercised.

NOTE 2: The word "interest" as used herein includes, in the case of corporations, common officers or directors, and partial (as well as total) ownership interests represented by ownership of voting stock.

NOTE 3: In applying the provisions of paragraph (a) of this section to the stockholders of a corporation which has more than 50 stockholders:

(a) Only those stockholders need be considered who are officers or directors or who directly or indirectly own 1 percent or more of the outstanding voting stock.

(b) Stock ownership by an investment company as defined in 15 U.S.C. section 80a–3 (commonly called a mutual fund) need be considered only if it directly or indirectly owns 3 percent or more of the outstanding voting stock or if officers or directors of the corporation are representatives of the investment company. Holdings by investment companies under common management shall be aggregated. If an investment company directly or indirectly owns voting stock in an intermediate company which in turn directly or indirectly owns 50 percent or more of the voting stock of the corporation, the investment company shall be considered to own the same percentage of outstanding shares of such corporation as it owns of the intermediate company: *Provided, however,* That the holding of the investment company need not be considered where the intermediate company owns less than 50 percent of the voting stock, but officers or directors of the corporation who are representatives of the intermediate company shall be deemed to be representatives of the investment company.

(c) In cases where record and beneficial ownership of voting stock is not identical (e.g., bank nominees holding stock as record owners for the benefit of mutual funds, brokerage houses holding stock in street name for the benefit of customers, trusts holding stock as record owners for the benefit of designated parties), the party having the right to determine how the stock will be voted will be considered to own it for the purposes of this section.

(b) The provisions of paragraph (a) of this section are not effective until August 10, 1973, as to ownership interests proscribed herein if such interests were in existence on or before July 1, 1970 (e.g., if a franchise were in existence on or before July 1, 1970): *Provided, however,* That the provisions of paragraph (a) of this section are effective on August 10, 1970, as to such interests acquired after July 1, 1970.

Subpart K—Technical Standards

§ 76.601 Performance tests.

(a) The operator of each cable television system shall be responsible for insuring that each such system is designed, installed, and operated in a manner that fully complies with the provisions of this subpart. Each system operator shall be prepared to show, on request by an authorized representative of the Commission, that the system does, in fact, comply with the rules.

(b) The operator of each cable television system shall maintain at its local office a current listing of the cable television channels which that system delivers to its subscribers and the station or stations whose signals are delivered on each Class I cable television channel, and shall specify for each subscriber the minimum visual signal level it maintains on each Class I cable television channel under normal operating conditions.

(c) The operator of each cable television system shall conduct complete performance tests of that system at least once each calendar year (at intervals not to exceed 14 months) and shall maintain the resulting test data on file at the system's local office for at least five (5) years. It shall be made available for inspection by the Commission on request. The performance tests shall be directed at determining the extent to which the system complies with all the technical standards set forth in § 76.605. The tests shall be made on each Class I cable television channel specified pursuant to paragraph (b) of this section, and shall include measurements made at no less than three widely separated points in the system, at least one of which is representative of terminals most distant from the system input in terms of cable distance. The measurements may be taken at convenient monitoring points in the cable network: *Provided*, That data shall be included to relate the measured performance to the system performance as would be viewed from a nearby subscriber terminal. A description of instruments and procedure and a statement of the qualifications of the person performing the tests shall be included.

(d) Successful completion of the performance tests required by paragraph (c) of this section does not relieve the system of the obligation to comply with all pertinent technical standards at all subscriber terminals. Additional tests, repeat tests, or tests involving specified subscriber terminals may be required by the Commission in order to secure compliance with the technical standards.

(e) All of the provisions of this section shall become effective March 31, 1972.

§ 76.605 Technical standards.

(a) The following requirements apply to the performance of a cable television system as measured at any subscriber terminal with a matched termination, and to each of the Class I cable television channels in the system:

(1) The frequency boundaries of cable television channels delivered to subscriber terminals shall conform to those set forth in § 73.603(a) of this chapter: *Provided, however*, That on special application including an adequate showing of public interest, other channel arrangements may be approved.

(2) The frequency of the visual carrier shall be maintained 1.25 MHz±25 kHz above the lower boundary of the cable television channel, except that, in those systems that supply subscribers with a converter in order to facilitate delivery of cable television channels, the frequency of the visual carrier at the output of each such converter shall be maintained 1.25 MHz±250 kHz above the lower frequency boundary of the cable television channel.

(3) The frequency of the aural carrier shall be 4.5 MHz±1 kHz above the frequency of the visual carrier.

(4) The visual signal level, across a terminating impedance which correctly matches the internal impedance of the

cable system as viewed from the subscriber terminals, shall be not less than the following appropriate value:

Internal impedance:
75 ohms.
300 ohms.
Visual signal level:
1 millivolt.
2 millivolts.

(At other impedance values, the minimum visual signal level shall be $\sqrt{0.0133 Z}$ millivolts, where Z is the appropriate impedance value.)

(5) The visual signal level on each channel shall not vary more than 12 decibels within any 24-hour period and shall be maintained within:

(i) 3 decibels of the visual signal level of any visual carrier within 6 MHz nominal frequency separation, and

(ii) 12 decibels of the visual signal level on any other channel, and

(iii) A maximum level such that signal degradation due to overload in the subscriber's receiver does not occur.

(6) The rms voltage of the aural signal shall be maintained between 13 and 17 decibels below the associated visual signal level.

(7) The peak-to-peak variation in visual signal level caused by undesired low frequency disturbances (hum or repetitive transients) generated within the system, or by inadequate low frequency response, shall not exceed 5 percent of the visual signal level.

(8) The channel frequency response shall be within a range of ±2 decibels for all frequencies within −1 MHz and +4 MHz of the visual carrier frequency.

(9) The ratio of visual signal level to system noise, and of visual signal level to any undesired cochannel television signal operating on proper offset assignment, shall be not less than 36 decibels. This requirement is applicable to:

(i) Each signal which is delivered by a cable television system to subscribers within the predicted Grade B contour for that signal, or

(ii) Each signal which is first picked up within its predicted Grade B contour.

(10) The ratio of visual signal level to the rms amplitude of any coherent disturbances such as intermodulation products or discrete-frequency interfering signals not operating on proper offset assignments shall not be less than 46 decibels.

(11) The terminal isolation provided each subscriber shall be not less than 18 decibels, but in any event, shall be sufficient to prevent reflections caused by open-circuited or short-circuited subscriber terminals from producing visible picture impairments at any other subscriber terminal.

(12) As an exception to the general provision requiring measurements to be made at subscriber terminals, and without regard to the class of cable television channel involved, radiation from a cable television system shall be measured in accordance with procedures outlined in § 76.609(h), and shall be limited as follows:

Frequencies	Radiation limit (microvolts/meter)	Distance (feet)
Up to and including 54 MHz	15	100
Over 54 up to and including 216 MHz	20	10
Over 216 MHz	15	100

(b) Cable television systems distributing signals by using multiple cable techniques or specialized receiving devices, and which, because of their basic design, cannot comply with one or more of the technical standards set forth in paragraph (a) of this section, may be permitted to operate provided that an adequate showing is made which establishes that the public interest is benefited. In such instances, the Commission may prescribe special technical requirements to ensure that subscribers to such systems are provided with a good quality of service.

(c) Paragraph (a)(12 of this section shall become effective March 31, 1972. All other provisions of this section shall become effective in accordance with the following schedule:

	Effective date
Cable television systems in operation prior to March 31, 1972	Mar. 31, 1977
Cable television systems commencing operations on or after March 31, 1972	Mar. 31, 1972

§ 76.609 Measurements.

(a) Measurements made to demonstrate conformity with the performance requirements set forth in §§ 76.601 and 76.605 shall be made under conditions which reflect system performance during normal operations including the effect of any microwave relay operated in the Cable Television Relay (CAR) Service intervening between pickup antenna and the cable distribution network. Amplifiers shall be operated at normal gains, either by the insertion of appropriate signals or by manual adjustment. Special signs inserted in a cable television channel for measurement purposes should be operated at levels approximating those used for normal operation. Pilot tones, auxiliary or substitute signals, and nontelevision signals normally carried on the cable television system should be operated at normal levels to the extent possible. Some exemplary, but not mandatory, measurement procedures are set forth in this section.

(b) When it may be necessary to remove the television signal normally carried on a cable television channel in order to facilitate a performance measurement, it will be permissible to disconnect the antenna which serves the channel under measurement and to substitute therefor a matching resistance termination. Other antennas and inputs should remain connected and normal signal levels should be maintained on other channels.

(c) As may be necessary to ensure satisfactory service to a subscriber, the Commission may require additional tests to demonstrate system performance or may specify the use of different test procedures.

(d) The frequency response of a cable television channel may be determined by one of the following methods, as appropriate:

(1) By using a swept frequency or a manually variable signal generator at the sending end and a calibrated attenuator and frequency-selective voltmeter at the subscriber terminal; or

(2) By using a multiburst generator and modulator at the sending end and a demodulator and oscilloscope display at the subscriber terminal.

(e) System noise may be measured using a frequency-selective voltmeter (field strength meter) which has been suitably calibrated to indicate rms noise or average power level and which has a known bandwidth. With the system operating at normal level and with a properly matched resistive termination substituted for the antenna, noise power indications at the subscriber terminal are taken in successive increments of frequency equal to the bandwidth of the frequency-selective voltmeter, summing the power indications to obtain the total noise power present over a 4 MHz band centered within the cable television channel. If it is established that the noise level is constant within this bandwidth, a single measurement may be taken which is corrected by an appropriate factor representing the ratio of 4 MHz to the noise bandwidth of the frequency-selective voltmeter. If an amplifier is inserted between the frequency-selective voltmeter and the subscriber terminal in order to facilitate this measurement, it should have a bandwidth of at least 4 MHz and appropriate corrections must be made to account for its gain and noise figure. Alternatively, measurements made in accordance with the NCTA standard on noise measurement (NCTA Standard 005–0669) may be employed.

(f) The amplitude of discrete frequency interfering signals within a cable television channel may be determined

with either a spectrum analyzer or with a frequency-selective voltmeter (field strength meter), which instruments have been calibrated for adequate accuracy. If calibration accuracy is in doubt, measurements may be referenced to a calibrated signal generator, or a calibrated variable attenuator, substituted at the point of measurement. If an amplifier is used between the subscriber terminal and the measuring instrument, appropriate corrections must be made to account for its gain.

(g) The terminal isolation between any two terminals in the system may be measured by applying a signal of known amplitude to one and measuring the amplitude of that signal at the other terminal. The frequency of the signal should be close to the mid-frequency of the channel being tested.

(h) Measurements to determine the field strength of radio frequency energy radiated by cable television systems shall be made in accordance with standard engineering procedures. Measurements made on frequencies above 25 MHz shall include the following:

(1) A field strength meter of adequate accuracy using a horizontal dipole antenna shall be employed.

(2) Field strength shall be expressed in terms of the rms value of synchronizing peak for each cable television channel for which radiation can be measured.

(3) The dipole antenna shall be placed 10 feet above the ground and positioned directly below the system components. Where such placement results in a separation of less than 10 feet between the center of the dipole antenna and the system components, the dipole shall be repositioned to provide a separation of 10 feet.

(4) The horizontal dipole antenna shall be rotated about a vertical axis and the maximum meter reading shall be used.

(5) Measurements shall be made where other conductors are 10 or more feet away from the measuring antenna.

§ 76.613 Interference from a cable television system.

In the event that the operation of a cable television system causes harmful interference to reception of authorized radio stations, the operator of the system shall immediately take whatever steps are necessary to remedy the interference.

§ 76.617 Responsibility for receiver-generated interference.

Interference generated by a radio or television receiver shall be the responsibility of the receiver operator in accordance with the provisions of Part 15, Subpart C, of this chapter: *Provided, however,* That the operator of a cable television system to which the receiver is connected shall be responsible for the suppression of receiver-generated interference that is distributed by the system when the interfering signals are introduced into the system at the receiver.

U. S. GOVERNMENT PRINTING OFFICE : 1974 O - 539-214